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APPENDIX - VOL. I

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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 325

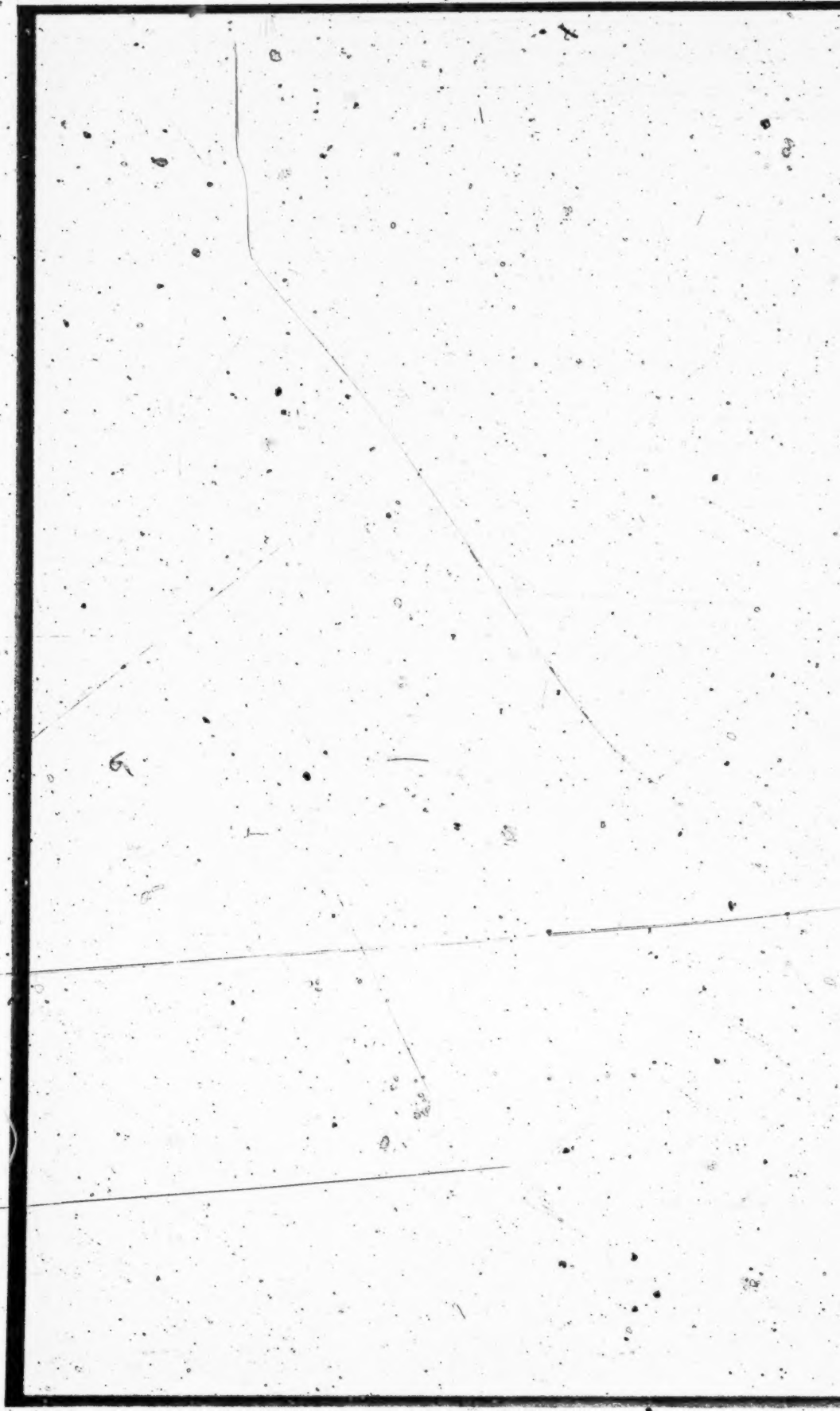
JAMES A. WATTS AND WALTER B. BLUE, PETITIONERS,

vs.

SEWARD SCHOOL BOARD AND STATE BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, RESPONDENTS.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF ALASKA

PETITION FOR CERTIORARI FILED JULY 3, 1967
CERTIORARI GRANTED OCTOBER 9, 1967



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[Filed June 15, 1961.]

IN THE SUPERIOR COURT FOR
THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

JAMES A. WATTS and
WALTER B. BLUE,

Petitioners

v.

No. 61-728

SEWARD SCHOOL BOARD and
BOARD OF EDUCATION, APPEAL
HEARING COMMITTEE,

Respondents.

PETITION FOR WRIT OF REVIEW

Petitioners above named move the Court for issuance of a Writ of Review directed to the Alaska State Board of Education requiring that agency to forward to the above court for review the record of the proceedings held by that agency, as well as the record of the proceedings held by the Seward School Board, in connection with the non-retention of teachers Walter B. Blue and James A. Watts. The decision of which review is sought is set forth on Exhibit "A" attached hereto. (Petitioners have been furnished only with an un-dated, un-signed verifax copy such as that marked Exhibit "A".)

This petition is filed pursuant to the provisions of Rules 109-115, inclusive RCP, and is based on the following representations.

1. *Brief History of this Case.* Petitioners are long-time residents of Seward, Alaska and are teachers by training and practice. Petitioner Blue has been a life-long resident of Seward; Petitioner Watts has been a resident and teacher at Seward for approximately eight or nine years. Their teach-

ing contracts were subject to automatic renewal in accordance with the provisions of No. 37-5-11 ACLACS unless certain statutory procedures were followed. In the spring of 1960, petitioners were notified by the Seward School Board that their teaching contracts would be terminated. Petitioners have always alleged and still do maintain that this action was undertaken because they were instrumental in the formation of a teacher's union at Seward, Alaska. Petitioners have maintained that their non-retentions were retaliatory in nature and that they were discriminated against because of their union activities. Petitioners requested a hearing before the Seward School Board which was held in April of 1960; the Seward School Board affirmed its decision to non-retain the petitioners; and petitioners appealed from that decision to the Alaska State Board of Education. That higher administrative agency held a hearing in the summer of 1960 and remanded the case to the Seward School Board for a new hearing for the reason that the lower Board had failed to enter findings of fact or conclusions explicating the basis for its decision. Accordingly, a second hearing was held by the Seward School Board in the fall of 1960 and at the conclusion thereof the Seward School Board reaffirmed its earlier decision (again without having entered findings of fact; however, this deficiency was *subsequently* remedied). Appeal therefrom was taken again to the State Board of Education and in May of 1961, the Board of Education rendered the decision which is here complained of, a copy of which is attached hereto marked Exhibit "A".

2. *Petitioners Have No Right of Appeal or Alternatives "Plain, Speedy or Adequate Remedy".* The decision of which review is here sought was rendered at the conclusion of a hearing which the State Board of Education conducted in purported compliance with the provisions of Ch. 92, No. 3(c), SLA 1960. This section of the code amended No. 37-5-13 ACLAS (Ch. 71, No. 3, SLA 1957) to provide for a right of appeal from local school board hearings. The 1960 act did not provide for a right of appeal from the decision of the Board of Education to the Superior Court of the

State of Alaska. Hence, only through a Petition for Writ of Review can judicial review of the higher administrative agency's decision be secured.

3. *The Board of Education, Appeal Hearing Committee, Exercised Its Functions Erroneously and Arbitrarily and Exceeded Its Jurisdiction, With Result That the Petitioners Have Been Deprived of Property Without Due Process of Law.*

A. *The Petitioners Were Not Afforded a Hearing De Novo.* In 1959 the State Legislature adopted the Administrative Procedure Act. No. 2 A-12-2 ACLACS (Ch. 143, Ch. 2, No. 2, SLA 1959) expressly provides that the procedures of the Alaska State Board of Education conducted in connection with the discharge of teachers shall be held pursuant to the provisions of the Administrative Procedure Act. Under this act, the hearing held by the respondent State Board of Education should have been conducted (a) in Anchorage, for the transaction involved occurred in the South Central Senatorial District, (b) with the right of subpoena power extended to the petitioners, (c) with the right granted the petitioners to call witnesses on their behalf and to introduce exhibits and to cross-examine opposing witnesses. The 1960 act, Ch. 92, No. 3(c) is silent on the subject of whether the hearing held by the State Board of Education should be in the nature of a De Novo hearing such as that contemplated by the Administrative Procedure Act, or confined to the record. Hence, the provisions of the Administrative Procedure Act were applicable in this case. However, the respondent Board of Education conducted its hearing in Juneau; announced prior to the hearing that witnesses would not be heard and that the Board's consideration would be limited and confined to the record such as was produced by the Seward School Board. Petitioners have been denied the opportunity of a De Novo hearing. By failure to comply with applicable law the Alaska State Board of Education acted beyond its jurisdiction and, to that extent, acted arbitrarily and its decision is voidable.

B. *The Board of Education, Appeal Hearing Committee, Usurped the Function and Jursidiction of the Alaska State Superior Court.* In its decision, the respondent Board of Education declares that, although it is not bound by the Administrative Procedure Act, it did adopt the very standards set forth in No. 2 A-12-25 ACLACS (Ch. 143, Ch. 2, No. 25, SLA 1959). This section the Legislature pointedly reserved to the Superior Court of the State of Alaska. Not only did the Board of Education decline to afford petitioners the De Novo hearing guaranteed by the Administrative Procedure Act, but having done so the Board then substituted its judgment for the judgment of a Superior Court Judge on a matter and in a way in which the Legislature by implication has declared the respondent is not competent (let alone a hearing officer) to act.

C. *The Board of Education Failed to Enter Any Findings and Failed To Render Any Conclusions to Support Its Decision.* The decision complained of consists of but one sentence, for all practical purposes, and that sentence reads as follows:

> Since after mature consideration of these records and arguments we do not feel that the original decision of the school board was unsupported by substantial evidence, we are constrained to agree with that board's decision."

Whereas the Seward School Board had entered the elaborate findings of fact and had (through its attorney) entered conclusions wherein it endeavored to justify its decision, the respondent State of Education has entered none. Although the Board of Education has blandly concluded the decision of the Seward School Board was "supported by substantial evidence", the Board of Education conspicuously failed to enter any findings of fact. This deficiency vitiates the entire decision for we respectfully submit that, even if true, many of the findings of fact entered by the Seward School Board would not, as a matter of law, constitute cause for non-retention. And by failing to specify which of the lower

school board's findings it adopted, the Board of Education has rendered a decision which is vulnerable to the same challenges that could legitimately be raised against findings and conclusions adopted by the lower board. This deficiency is made more apparent in the following paragraph.

3. *The Findings of the Seward School Board Were Not Supported by "Substantial Evidence".* In summary, the Seward School Board terminated the petitioners' teaching contract on three grounds:

(a) Allegedly the petitioners failed to substantially comply with certain school board regulations.

(b) Allegedly the petitioners were guilty of "immoral conduct" in circulating a petition for the recall of Seward School Board members.

(c) Allegedly the petitioners were guilty of immoral conduct in circulating an open letter such as that attached marked Exhibit "B".

In point of fact, the record of the lower board hearing is completely devoid of any proof whatever (let alone substantial evidence) that the Seward School Board ever adopted any regulations at all. If this was one of the grounds on which the Board of Education adopted its decision, then it is patently arbitrary and it is patently unsupported by any substantial evidence. By having failed to specify just which findings it *did* deem supported by substantial evidence, the Board of Education acted arbitrarily, acted beyond its jurisdiction, and acted in violation of the petitioners constitutional rights to be protected against the deprivation of their property without due process, as guaranteed both by the 14th Amendment to the United States Constitution as well as by Article I, Section 7, of the Constitution of the State of Alaska.

With respect to (b), it was admitted that the petitioners did circulate a petition seeking the recall of certain school board members; however, the facts are clear that this circulation was carried on during the summer months after

school was out; the petitioners were only doing what they had a legal right to do. As a matter of law, such conduct could not constitute "immoral conduct" within the meaning of No. 37-5-12 ACLACS which provides that immoral conduct tending to bring an individual concerned or the teaching profession into public disgrace is a ground for non-retention.

Likewise, it is admitted that the petitioners circulated an open letter of which a copy is attached hereto marked Exhibit "B"; however, as a matter of law, the circulation of such a petition during the summer months, after school was closed, could not constitute "immoral conduct" as contemplated by the Legislature. The determination of this question is, ultimately, a question for the courts of this State to rule on. Hence the necessity for the issuance of the Writ of Review prayed for.

4. *The Respondents Were Arbitrary and Capricious.* The Board of Education was arbitrary in accepting without reservation the findings made by the Seward School Board which were in turn based on prejudicial, unfair, and improper evidence. The record of the lower board hearing is replete with instances of arbitrary procedure and unfair tactics utilized by the Seward School Board in its endeavor to build a record which would prejudice the minds of the Board of Education, Appeal Hearing Committee. For example, counsel for the Seward School Board over petitioners' strenuous objections persisted in inquiring into Walter Blue's religious beliefs, in clear violation of his rights as guaranteed by No. 58-6-1 ACLA 1949. The Seward School Board attempted to get into evidence a scandalous, unidentified letter containing remarks about petitioner Blue which are slanderous per se and which the Seward School Board knew full well had nothing whatever to do with the charges it had raised in its Notice of Non-Retention. The only purpose for its introduction was to prejudice the hearing public and the members of the Board of Education against petitioner Blue.

5. *The Petitioners' Claims Are Such That Justice Demands an Immediate Review of the Decision in Question.*

The petitioners are by profession and training teachers. The petitioners have lived at Seward for many years; one for his entire life-time. Their right and opportunity to pursue their chosen profession and to continue to do so in the area of their homes and their families is now at stake. Petitioners seek the following relief: That the decision rendered by the State Board of Education be held for nought and that they be ordered reinstated; or, in the alternative, that a hearing De Novo in accordance with the provisions of the Administrative Procedure Act be granted the petitioners.

Finally, petitioners incorporate herein by reference as though fully set forth entire contents of their Memorandum and Citation References which was filed with the State Board of Education at the conclusion of that agency's hearing.

Dated this 15th day of June, 1961.

CONNOLLY & WALTON
Attorneys for Petitioners

/s/ Peter B. Walton
Peter B. Walton

EXHIBIT "A"

BEFORE THE HEARING COMMITTEE
OF THE
ALASKA STATE BOARD OF EDUCATION

WATTS AND BLUE	)	
	)	
v.	)	OPINION
	)	
SEWARD SCHOOL BOARD	)	
	)	

This is an appeal from a decision of the Seward School Board pursuant to Section 3c of Chapter 92, SLA 1960.

Appellants James Watts and Walter Blue were teachers in the public schools of Seward, 1958, 1959, and 1960. In March, 1960, they were served notices of non-retention and bills of particulars in March, 1960. These notices and bills were the result of the circulation among the general public of Seward about the middle of May, 1959, as well as the efforts of the teachers to secure the recall of the School Board.

Appellants requested a hearing pursuant to Section 3a of Chapter 92 within the statutory period. After many hours of testimony which resulted in a record of over 400 pages long, the Seward School Board decided to adhere to its earlier decision. The School Board accompanied their decision with written findings of fact.

This hearing committee is not compelled to follow the procedures of the Administrative Procedure Act since this hearing was more in the nature of an appellate argument than in the usual procedure outlined in Chapter 2 of the Act (Ch. 143, SLA 1959). However, certain sections were followed substantially by this Board in its conduct of the hearing, particularly applicable subsections of Sections 13 and 14, Chapter 2, 143, SLA 1959. Since the Administrative Procedures Act is concerned primarily with hearings in

the first instance, it does not set forth the weight to be given the Seward School Board's decision; to resolve these questions the hearing committee has followed the mandate of Section 25(2) of Chapter 2, Chapter 143, SLA 1959 as to "whether there was a fair hearing; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

The Board has reviewed very carefully the entire previous record and listened with interest to the arguments presented by appellants' attorney and by counsel for the School Board. Since after mature consideration of these records and arguments we do not feel that the original decision of the School Board was unsupported by substantial evidence, we are constrained to agree with that Board's decision. Therefore the action of the Seward School Board in issuing non-retention certificates was justified and that action is hereby affirmed.

Done at , Alaska, this day of May, 1961.

EXHIBIT "B"

Seward, Alaska
May 18, 1959.

AN OPEN LETTER TO THE
SEWARD SCHOOL BOARD
Seward, Alaska

Gentlemen:

A Seward Branch of the American Federation of Teachers, affiliated with the AFL-CIO, has applied for and received

confirmation of its charter. The AFT is a recognized organization of professional teachers and thereby commands recognition by the Seward School Board.

The Seward Local takes this means of informing the Seward School Board (and the public) of our stand in the current struggle for a good school. We hold that incidents occuring during the last year have reached such proportions as to be definitely detrimental to the morale of our teaching staff and the effectiveness of the local educational system.

1. Illegal non-retention of three teachers, reflecting on the professional reputations of those involved, in violation of Section 138 of the State School Laws, which was later corrected only after the insistence of the Seward Local of the American Federation of Teachers in a public hearing with legal counsel.
2. It is a legitimate duty of administration to maintain or create harmony in the school, and the tension noted in the pupils, and the "friction" which some of them were aware of, does not fit this requirement.
3. Non-compliance with the fire drill regulation requiring ten fire drills per year (Sec. III, b, 4, Page 9, Rules and Regulations for the school staff /local/). This applies to both school buildings, one of which is a dangerous building.
4. Ordering the custodian, Jesse Moore, to do technical electrical work beyond his skill in a dangerous building.
5. On different occasions threatening to "get one third of the faculty this year, and half of the remainder next year" in an apparent attempt to "purge" the faculty. Why Mr. Fabricius should have had this preconceived and hostile attitude is unknown. Teachers have raised the question, "How can one man, a stranger coming into a town, have the right to tamper with the livelihood of teachers, taxpayers, prop-

erty owners, and upset a school system in a single year's time?" More than bringing teachers and others into public disgrace and disrespect, actions cited have jeopardized the property and investments of several people, without giving legitimate cause and without regard for their feelings and personal rights.

6. Provoking the resignation of an outstanding teacher by forbidding him to ride the school bus in what *seems* to be a violation of the intent of the Rules and Regulations Affecting School Transportation, Page 13, Item 31, Laws of the Territory, etc., the apparent authoritarian mishandling of this resignation impairing the teacher's chances for a teaching position elsewhere. This action has placed the School Board and the taxpayers in the possible position of a suit to secure payment of the contract.

7. Dictatorial treatment of teachers, forcing them into the choice of submitting and taking it at the loss of personal dignity, or fighting back in a public spectacle.

8. Speaking in a peremptory and threatening manner in the presence of a pupil, to Mr. Smith.

9. Two specific instances have occurred violating the requirement to provide Educational Leadership in the Local Regulations.

   a. Neglect to permit the development of a proper music program.

   b. Information relative to the Drama Festival held at Palmer was not made known to the teachers or the student body, although the school had participated ardently and with distinction the previous year.

   c. This same requirement is violated in overtly *or* covertly driving out Mr. Conder, Mr. Swick, Mr. Smith, and possibly others who had a definite contribution to make to the functions of the school.

10. Firing of Mrs. Davis apparently on the basis of personal dislike rather than for dereliction of duty or inefficiency. This resulted in public discussion reflecting adversely on the school, and placed Mrs. Davis in the position of consulting an attorney relative to the collection of salary allegedly due her.

We have, or can secure, sworn statements on every item.

We, the Seward Local of the American Federation of Teachers, have made every effort to secure correction of illegal, unethical, and unfair acts on the assumption that when the School Board knew of them it would take corrective action.

On May 8, 1959, in a public meeting with the School Board, compliance with the law in the matter of non-retention was secured only after great opposition and protest that the "Law had not been tested, and some educators do not regard it as a good law."

At this same time we withheld information contained in this letter in order to keep the school functioning through the end of the school year and commencement.

We then invited the School Board to meet with us privately to clarify the items here presented, to give Mr. Fabricius and the School Board the opportunity to reply, and to determine the quality of the list of administrative statements and actions. This, in effect, was giving Mr. Fabricius and the Board the opportunity for self defense which was denied the teachers who were not given contracts in April. We arranged a meeting time to suit the convenience of the Board, and our invitation was accepted.

With the exception of Mr. Howell, President, the Seward School Board DID NOT APPEAR, nor was the administration represented.

Therefore we request an immediate special open School Board meeting Tuesday night, May 19, for the purpose of presenting to the Board and the public particulars of administration in the Seward Public Schools, with announcement of the meeting by the Board over Station KIBH. At this

time the Local shell demand immediate, guaranteed, substantial improvement in administrative policies including:

1. Validation of contracts offered to formerly non-retained teachers and those effected by additional education requirements.
2. Correction of the situation regarding Mr. Smith and Mr. Swick.
3. Avoidance of unreasonable reassignment of teachers wherever possible.
4. Conformity with standard ethical and professional standards personnel policies, such as outlined by AFT and NEA, especially regarding:
   a. Notification of teachers before their written notice of non-retention.
   b. Attempting to give constructive criticism to teachers, in an effort to correct and help personnel.

It is our sincere hope that, at this meeting, we can reach mutually acceptable solutions to the many problems facing us at this time.

Very truly yours,

SEWARD LOCAL
AMERICAN FEDERATION
OF TEACHERS

Copies: To patrons of the
Seward School.

TAPE NO. B-73 Page 8 DATE 12-8-61
Court Convened AT 2:30 p.m. PRESENT: Judge Fitzgerald
Clerk Haugan
CASE NO. 61-728. CASE TITLE: James A. Watts &
Walter B. Blue
LOG v.
NUMBER PROCEEDING: Seward School Board
0800.2 M.O. Rendering Oral
Decision

A hearing on Motion to dismiss petition for writ of review having been had 7-28-61 & decision reserved,

Court now renders bral decision

(1) that review is granted.

(2) that the decision of the Board of 5-26-61 is vacated.

(3) that this proceedings is remanded to the Board of Education with directions to the Board to make specific findings: (a) whether the petitioners were guilty of immoral conduct & if so, then setting forth the manner & by what occasion such occurred, (b) whether Regulation E(7) of the Seward School Board has been duly adopted & if so, when such regulations became effective, (c) if Regulation E(7) was duly adopted whether the petitioners violated the regulation & if so, then setting forth the manner & by what occasion the violations occurred. The Board may augment the record & take additional evidence, may apply its own rules or other procedures in conducting any hearing, & may establish the time & place of hearing to meet the convenience of the Board.

Upon making the determinations herein required, the Board is directed to reduce its findings & its decision to writing. Since the Board is an agency of the State, no costs or attys' fees will be allowed. Petitioners to prepare appropriate Order & Judgment.

Clerk's notes:
Call Watts - 12-8
Call Pease - 12-8

Entered Court Journal at Anchorage
No. B-2 Page 350.
Docketed:

[Filed December 28, 1961.]

MANDATE

A petition was filed by the above named petitioners seeking issuance of a writ of review directed to the Alaska State Board of Education for the purpose of reviewing a decision rendered by that agency, adverse to the petitioners, on or about May 26, 1961.

The decision complained of constituted an affirmation of a previous decision rendered by the Seward School Board to affirm its action, likewise previously taken, non-retaining petitioners as teachers in the Seward public school system. By its decision, the Seward School Board (1) concluded that petitioners Blue and Watts had been guilty of "immoral conduct" under sub-section (2) of Section (2), Chapter 92, SLA, 1960, by (a) circulating a certain Open Letter, (b) circulating a certain Petition for Recall, and that petitioner Watts was guilding of such "immoral conduct" on two different occasions when he engaged in conferences with teachers Frampton and Richardson, and that petitioner Blue was guilty of "immoral conduct" on one occasion when he made a certain speech to the members of the ILWU at Seward; (2) concluded that petitioners Watts and Blue were guilty of substantial non-compliance with a regulation previously adopted by the Seward School Board in that they allegedly circulated the same Open Letter among the public without first submitting it through the school superintendent. By its decision the Board of Education merely declared that

> ". . .we do not feel that the original decision of the school board was unsupported by substantial evidence, we are constrained to agree with that deci-

> sion. Therefore the action of the Seward School Board in issuing non-retention certificates was justified and that action is hereby affirmed."

The State Board of Education entered no findings of fact or conclusions of law and failed to specify which of the findings previously entered by the Seward School Board it approved of and which findings, if any, it found unsupported by the evidence. Likewise, the State Board of Education failed to specify by entering conclusions which of the bases, or whether all of the bases, advanced by the Seward School Board were proper grounds for non-retention in its opinion.

Petitioners instituted this proceeding by filing a Petition for Writ of Review under Rule III, Rules of Civil Procedure. Petitioners sought review on five grounds and alleged that the State Board of Education through its Appeal Hearing Committee had exercised its functions erroneously and arbitarily in these ways: (a) In not providing the petitioners with a hearing de novo under the Administrative Procedures Act, (2) in usurping the functions and jurisdiction of the Superior Court, (3) in failing to enter findings of fact and conclusions of law in support of its decision, (4) in finding and concluding that all of the findings of the Seward School Board were supported by substantial evidence, (5) in acting arbitrarily and capriciously.

The respondents, Seward School Board and Board of Education, appeared in this proceeding by filing a motion to dismiss the Petition for Writ of Review on five grounds, to-wit, that (1) petitioners failed to file a cost bond, (2) the Administrative Procedures Act does not apply to a proceeding under sub-section (2), Section (2), Chapter 92, SLA, 1960, (3) the State Board of Education followed the accepted and usual course of administrative procedures on appeal by simply affirming the findings and conclusions of the inferior administrative agency and by not making its own findings and conclusions, (4) the Superior Court in a proceeding such as this should not weigh the evidence consi-

dered by the Seward School Board or by the Board of Education, (5) the determination by the Board of Education, finding the petitioners' actions constitute immorality and substantial non-compliance with the regulations of the Seward School Board are not subject to review by this Court.

Having considered these various contentions, I conclude (1) that petitioners were not entitled to a de novo hearing before the Board of Education, Appeal Committee, under the Administrative Procedures Act, (2) by authority of court order entered July _____, 1961, the petitioners did file a cost bond and the same is now in effect; the respondents have in no way been damaged by virtue of any delay in the filing thereof which may have occurred. With respect to the remaining contentions of both petitioners and respondents, I make the following conclusions: Sub-section (1), Section (2), Chapter 92, SLA, 1960, provides generally that teachers may be non-retained for cause. Sub-section (2), Section (2), Chapter 92, SLA, 1960, defines "cause" as either (a) incompetency, (b) immorality, or (c) substantial non-compliance with school laws or applicable school board regulations. The petitioners were non-retained by the Seward School Board for the reason that, in the Seward School Board's opinion, they were guilty of "immorality" and also of "substantial non-compliance with school board regulations". Immorality is defined by sub-section (2) of Section (2), Chapter 92, SLA, 1960, as being:

> "(2) Immorality, which is defined as conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect;"

I conclude that, as a matter of law, the circulation by the petitioners of the Open Letter to the Seward School Board under date of May 18, 1959, is not immoral conduct within the meaning of the statute. I also conclude that, as a matter of law, the circulation of a petition seeking the recall of members of the Seward School Board is not immoral conduct within the meaning of the statute.

Since the State Board of Education did not enter findings of fact or conclusions of law, and did not specify whether it found *all* of the inferior board's findings supported by substantial evidence; since the State Board of Education did not specify which, if less than all, of said findings were supported by substantial evidence; since the State Board of Education did not specify which or all of the conclusions rendered by the inferior board it adopted, I have no way of knowing whether the State Board of Education rested its decision in part on the conclusions of the Seward School Board that the circulation of such a petition for recall and circulation of such an Open Letter constituted immoral conduct within the statute. I have no way of knowing whether the State Board of Education rested its decision entirely or in part on the Seward School Board's conclusion that the petitioners had been guilty of substantial non-compliance with a Seward School Board regulation. In short, I am unable to determine which findings were found supported by substantial evidence by the Board or whether the Board found that all of the Seward School Board's findings were supported by substantial evidence. For these reasons; I conclude that the State Board of Education exercised its review functions erroneously to the injury of substantial rights of the petitioners. Therefore,

IT IS HEREBY ORDERED AND DECREED:

(1) That review is granted.

(2) That the decision of the State Board of Education, through its Appeal Committee, of May 26, 1961, be and it hereby is vacated and set aside.

(3) That this proceeding be and it hereby is remanded to the State Board of Education, Appeal Committee, for the purpose of enabling the State Board of Education, Appeal Committee, to make specific findings of fact and enter concrete conclusions as to:

(a) Whether the petitioners were guilty of immoral conduct and, if so, setting forth the manner and incidents and occasions constituting such immoral conduct,

(b) Whether regulation E (7) of the Seward School Board was ever duly adopted and, if so, on what date such regulation was adopted and became effective,

(c) Whether the petitioners ever violated such a regulation, if such a regulation was duly adopted and did thereafter become effective; and, if so, then setting forth the manner, incidents and the occasions by which the petitioners did violate such a regulation.

IT IS FURTHER ORDERED:

The State Board of Education may, if it sees fit, augment the record and take additional evidence; it may apply its own rules or other procedures in conducting any hearing which it may see fit to conduct; and it may establish the time and place of such hearing to meet its own convenience.

IT IS FURTHER ORDERED that since the Board of Education is an agency of the state, no costs or attorney's fees are allowed.

Dated: December 28, 1961.

/s/ James M. Fitzgerald
James M. Fitzgerald, Judge

[Acknowledgement of service dated December 20, 1961 at 2:00 o'clock p.m.]

[Filed July 31, 1962.]

OPINION FOR STATE BOARD OF EDUCATION

Before the Appeal Committee, State Board of Education.	)	
In the Matter of the Non-Retention by the Seward School Board of Teachers Walter B. Blue and James V. Watts.	)	*OPINION*

The Superior Court for the Third Judicial District has reviewed the decision of the State Board of Education Appeal Committee entered May, 1961, and has by its mandate, directed that the Appeal Committee enter detailed conclusions and specify the findings of fact upon which it relies in making its conclusions.

The Appeal Committee did not find it necessary to hold additional hearings and it proceeded on the basis of the record which was already before it at the time of the previous decision, with the one exception that it issued an order requesting submission of additional evidence on the matter of the validity of Regulation E(7) of the Seward School Board.

The Superior Court concluded, as a matter of law, that two of the grounds for the non-retention of teachers Watts and Blue were not sufficient. Quoting from the court:

> "I conclude that, as a matter of law, the circulation by the petitioners of the Open Letter to the Seward School Board under date of May 18, 1960, is not immoral conduct within the meaning of the statute. I also conclude that, as a matter of law, the circulation of a petition seeking the recall of members of the Seward School Board is not immoral conduct within the meaning of the statute."

This leaves only three courses of conduct which would substantiate the non-retention of teachers Watts and Blue. These courses of conduct were:

1. That Watts was guilty of "immoral conduct" when he engaged in conferences with teachers Frampton and Richardson urging them to join in the circulation of an Open Letter and the conduct of a recall election against the School Board of Seward.
2. That Blue was guilty of "immoral conduct" on the occasion that he made a speech to the members of the ILWU at Seward.
3. That petitioners Watts and Blue were guilty of substantial non-compliance with the regulation previously adopted by the Seward School Board in that they circulated an Open Letter to the School Board without first submitting it through the School Superintendent.

I.

In respect to the first alleged course of misconduct, the Seward School Board made the following findings of fact, numbers 19, 20 and 21, which are quoted below:

> "19. On or about April 28, 1959, James Watts asked Mr. and Mrs. Benjamin Frampton, who at that time were members of the faculty of Seward Public Schools, if they would go along with a group of which Watts was a representative and whose purpose was to oust Mr. Fabricius from his job as Superintendent of schools. (The Board resolves the conflict in testimony between Mr. and Mrs. Frampton and Mr. Watts in favor of Mr. and Mrs. Frampton, crediting their testimony and discrediting that of Mr. Watts. This decision is based in part on the demeanor of the individuals.) (Transcript 12, 13, 20-21, 69-70.)
>
> "20. In the Spring of 1959, James Watts solicited Monty H. Richardson, who at that time was a school teacher in the Seward Public Schools, to join a group, the purpose of which was to get rid of Mr. Fabricius as Superintendent of Schools. (The School Board resolves the conflict in testimony between Mr.

Richardson and Mr. Watts in favor of Mr. Richardson, by crediting Mr. Richardson's testimony and discrediting the testimony of Mr. Watts. This decision is based in part upon the demeanor of the two witnesses.) (Transcript 22-4.)

"21. The conduct of James Watts described in findings 19 and 20 tended to bring the teaching profession into public disgrace and disrespect.

"22. The conduct of James Watts described in findings 19 and 20 tended to bring James Watts into public disgrace or disrespect."

The Appeal Committee finds that findings numbered 19 and 20 are supported by substantial evidence and they will not be disturbed on appeal.

The findings numbered 21 and 22 purport to be findings of fact. However, because they are couched in the statutory language and go to the ultimate fact in dispute they also have many of the elements of a conclusion of law.

The Appeal Committee affirms findings numbers 21 and 22 and rules that these communications between James Watts and teachers Frampton and Richardson did tend to bring James Watts and the teaching profession into public disgrace or disrespect and thus constituted "immorality" as defined by Sec. 2(2) Ch. 92, SLA 1960. This would, therefore, be a sufficient ground for the non-retention of Mr. James Watts.

II.

Concerning the second alleged course of misconduct, the Seward School Board made the following findings of fact:

"26. In an attempt to gain popular support for a recall vote involving the Seward Public School Board members, Walter B. Blue made a speech to the International Longshoremen and Warehousemen's Union in Seward, Alaska, in which he stated, 'We have been unable to get rid of the Superintendent, so we are going to get rid of the Board,' or words to that effect. (Board Exhibit 11; Transcript 48-9.)

"27. The conduct of Walter B. Blue described in finding 26 tended to bring the teaching profession into public disgrace or disrespect.

"28. The conduct of Walter B. Blue described in finding 26 tended to bring Walter B. Blue into public disgrace or disrespect."

Finding number 26 is predicated on Board Exhibit 11 and pages 48 and 49 of the transcript. Board Exhibit 11 is a transcript of the prior Seward School Board hearing held April 8, 1960. In that transcript is the testimony of one John Sadusky. At that hearing the Seward School Board was represented by Mr. Burr and teachers Watts and Blue by Mr. Walton. The following is an excerpt from the testimony of Mr. Sadusky:

"Mr. Boney: Did you recall hearing Mr. Blue make a statement that we have been unable to get rid of the Superintendent, Mr. George Fabricius, so we are now going to get rid of the Board?

"Mr. Walton: We register again our objection for the obvious reason that Mr. Boney is inviting the witness to testify the way Mr. Boney wishes him to.

"Mr. Boney: Do you recall any statement made by Mr. Blue?

"Mr. Sadusky: Yes. There was a statement made to the effect that - this is not the exact words - that they couldn't get rid of the Superintendent so they had to go after the School Board. I believe he said he hated to do it since Mr. Casey was a good friend of his and happened to be on the Board.

"Mr. Boney: Who made the statements to the meeting assembled?

"Mr. Sadusky: Mr. Blue did the talking."

Counsel for Mr. Blue has raised some questions as to the utility of Board Exhibit No. 11 for the reason that the testi-

mony contained in that exhibit was not taken under oath. However, because of the informality in the rules of evidence which is allowed in administrative proceedings and because the only objection made by counsel for Mr. Blue to the introduction of this Exhibit 11 was as to its bulkyness, the testimony of Mr. Sadusky taken at that prior hearing will be considered.

Pages 48 and 49 of the transcript indicate that Mr. Blue substantially denied making the statemnts which are alleged to him.

The Appeal Committee feels that the evidence contained in Board Exhibit 11 does constitute substantial evidence in support of Finding of Fact No. 26, and that finding will not be disturbed by the Appeal Committee.

The Appeal Committee concludes that the conduct of Walter B. Blue described in finding 26 most certainly did tend to bring both Mr. Blue and the teaching profession into public disgrace or disrespect. It is the conclusion of the Committee that such an inflamatory statement delivered at a public meeting by a teacher and directed at the teacher's superintendent and school board could have no other result.

III.

The third alleged course of misconduct as specified in Finding of Fact No. 9 was that:

> "9. The distribution of the Open Letter to the Seward School Board by teachers Watts and Blue was a violation of Regulation E(7) of the School Board Regulations."

If the violation of Regulation E(7) is to serve as a ground for non-retention, the regulation must, of course, be a valid regulation. On this subject the Seward School Board made the following finding of fact:

> "3. Board Exhibit 12 is a true and correct copy of all the School Board regulations of the Seward Public Schools which were in effect during the school

> years 1958 and 1959 and 1959 through 1960. Said regulations were adopted by the Seward School Board and put into force at least prior to January 1, 1959, although through an oversight, this was not reflected in the School Board minutes prior to that date. (Board Exhibit 13.)"

In an effort to find out if, in fact, the regulation had been duly adopted by the Seward School Board and if that adoption has been reflected in the minutes of the School Board, the Appeal Committee issued an order requiring submission of additional evidence. This order requested a certified copy of that part of the minutes of the Seward School Board which would indicate the date upon which Regulation E(7) was duly adopted.

Counsel for the Seward School Board replied to this order in the following manner:

> "As stated in Exhibit 13, the Seward School Board does not have in its possession the minutes reflecting the adoption by the Seward School Board of regulation E(7)."

The Appeal Committee holds that in the absence of an entry in the Seward School Board minutes of the adoption of Regulation E(7), the affidavit set forth in Exhibit 13 is adequate proof that Regulation E(7) was adopted by the Seward School Board and put into effect at least prior to January 1, 1959.

The Appeal Committee finds that there was sufficient evidence to support the finding that teachers Watts and Blue did distribute the Open Letter to the Seward School Board before submitting it to the Superintendent. The Appeal Committee affirms the finding of the Seward School Board that such distribution constituted substantial non-compliance with Regulation E(7). Thus, this conduct constitutes a proper ground for non-retention of both teachers Watts and Blue as provided by Subsec. (3), Sec. 2, Ch. 92, SLA 1960.

CONCLUSION

1. The non-retention of James Watts was proper for the reasons set forth in parts I and III of this opinion.

2. That the non-retention of Walter B. Blue was proper for the reasons set forth in parts II and III of this opinion.

Dated this 26th day of July, 1962.

/s/ William Moran
William Moran, Chairman
State Board of Education
Appeal Committee

[Filed August 14, 1962.]

SECOND PETITION FOR WRIT OF REVIEW

Petitioners above named move the Court for issuance of a Writ of Review directed to the Alaska State Board of Education requiring that agency to forward to the above Court for review the record of the proceedings held by that agency, as well as the record of the proceedings held by the Seward School Board, in connection with the non-retention of teachers Walter B. Blue and James A. Watts.

The decision of which review is sought is attached hereto marked Exhibit "A".

This petition is filed pursuant to the provisions of Rules 109-115, inclusive, Rules of Civil Procedure, and is based on the following representations:

1. In May of 1961 the State Board of Education, through its Appeal Hearing Committee, rendered a decision. From that decision a petition for writ of review was filed in this cause. On January 31, 1962, the Honorable James M. Fitzgerald, Judge of this Court, issued a Mandate directed to the State Board of Education (1) granting a review, (2) setting aside the decision of the State Board of Education entered on May 26, 1961, (3) remanding this proceeding and

this cause to the State Board of Education for the purpose of entering specific findings of fact and concrete conclusions of law on certain points.

2. Thereafter, after much delay and following the failure of the State Board of Education to comply with an order entered by this Court on January 31, 1962, requiring the State Board of Education to report to the Court as to what schedule it proposed to follow, the same Honorable James M. Fitzgerald on July 3, 1962, issued an Order to Show Cause directing the State Board of Education to show cause, if any there might be, why petitioners Watts and Blue should not be reinstated as teachers in the public school system of Seward, Alaska.

3. Finally, after having been served with said Order to Show Cause, a decision was entered by the State Board of Education on July 26, 1962, embodied in Exhibit "A" attached hereto. By that decision the respondent State Board of Education did affirm the findings of the Seward School Board to the effect that:

> (1) Petitioner Watts was guilty of "immoral conduct" when he engaged in conferences with fellow teachers Frampton on or about April 28, 1959, and when he engaged in a conversation with fellow teacher Richardson in the spring of 1959.
>
> (2) Petitioner Blue was guilty of "immoral conduct" when, on some occasion, he allegedly made a speech to the International Longshoremen and Warehousemen's Union at Seward, Alaska, and allegedly stated "we have been unable to get rid of the superintendent so we are going to get rid of the Board" (in connection with an appeal for public support of a petition for the recall of certain school board members).
>
> (3) Both petitioners Watts and Blue were guilty of violating an alleged regulation E (7) of the Seward School Board regulations.

However, the Board did not state specifically in what respect the said alleged regulation was supposedly violated.

1. *Petitioners Have No Right of Appeal or Alternative "Plain, Speedy or Adequate Remedy".*

The decision of which review is here sought was rendered on the basis of a hearing which the State Board of Education held over one year ago in compliance with the provisions of Chapter 92, Section 3 (c), SLA, 1960. This Section of the Code amended Section 37-5-13, ACLACS (Chapter 71, Section 3, SLA, 1957) to provide for a right of appeal from local school Board hearings. The 1960 Act did not provide for a right of appeal from the decision of the State Board of Education to the Superior Court of the State of Alaska. Hence, only through a Petition for Writ of Review can judicial review of the State Board of Education decision be secured.

2. *The Board of Education, Appeal Hearing Committee, Exercised Its Functions Erroneously and Arbitrarily and Exceeded Its Jurisdiction, With the Result that Petitioners Have Been Deprived of Property Without Due Process of Law.*

The conclusion that petitioner Blue was guilty of "immoral conduct" on the occasion that he made a speech to the members of the I.L.W.U. at Seward was based entirely on Board Exhibit 11, which was a transcript of the first Seward School Board hearing held on April 8, 1960. After that hearing was held, the Seward School Board affirmed its determination to non-retain petitioner Blue. From that decision petitoner Blue appealed to the State Board of Education and the State Board of Education reversed the Seward School Board. One of the grounds for reversal was that the hearing, evidenced by Board Exhibit 11, was not under oath.

It now appears that the State Board of Education desires to affirm action subsequently taken by the Seward School Board on the basis of the very evidence which it earlier rejected for not being under oath.

4. *The Findings of the Seward School Board Were Not Supported by "Substantial Evidence".*

The first conclusion of the respondent Board to the effect that petitioner Watts was guilty of "immoral conduct" when he allegedly:

> "On or about April 28, 1959, ... asked Mr. and Mrs. Benjamin Frampton, who at that time were members of the faculty of the Seward Public Schools, if they would go along with a group of which Watts is a representative and whose purpose was to oust Mr. Fabricius from his job as Superintendent of Schools."

was not only not supported by substantial evidence, but, even if it was, would not fulfill the statutory definition of "immoral conduct"—to-wit, conduct which tended to bring the teaching profession into public disgrace and disrespect.

What one teacher might say to two other fellow teachers in the privacy of their own room, in our opinion, could not conceivably be the type of conduct which the Legislature ordained should be so "immoral" as to justify the expulsion of a teacher from a school system. A conclusion of this effect is arbitrary, capricious, and not supported by substantial evidence.

Our same argument would apply to the conversation allegedly had between Mr. Watts and fellow teacher Richardson in the Spring of 1959 when, allegedly, Mr. Watts asked Mr. Richardson:

> ". . . to join a group, the purpose of which was to get rid of Mr. Fabricius as Superintendent of schools."

We fail to see, even if this were true, how such an invitation could conceivably constitute:

> "Conduct tending to bring the teaching profession into public disgrace and disrespect."

or how such conduct could conceivably "tend to bring James Watts into public disgrace or disrespect". For this reason,

such a finding and such a conclusion of law is capricious, arbitrary, and not supported by substantial evidence.

The third conclusion of the State Board of Education was to the effect that both petitioners were guilty of violating an alleged School Board regulation. The respondent Board has failed to state in its decision of July 26, 1962, wherein the petitioners were guilty of "violating" the regulation. That is to say the respondent Board has made no finding of fact as to what the petitioners may or may not have done which would constitute a violation of such a regulation. For this reason, the action of the Board in failing to enter such an essential finding necessary to support its decision entitles the petitioners to review of that portion of the decision.

Furthermore, the State Board of Education, in reaching such a conclusion, has wholly gone beyond the scope of the testimony adduced at the Seward School Board and its decision is accordingly wholly unsupported by any substantial evidence and is arbitrary and capricious.

The Board of Education rests its decision, on this point, on an Exhibit 12 which purports to be Regulations of the Seward School Board. One of the factual issues raised in the Seward School Board hearing, and again raised before the Appeal Hearing Committee, was whether or not the document identified as Exhibit 12 did in fact represent regulations which were duly promulgated and adopted by the Seward School Board. At all times throughout the history of this litigation, the petitioners have adamantly denied that such regulations ever were adopted by the Seward School Board, least of all the so-called regulation E (7). The respondent Board has rested its decision on a spurious affidavit being Exhibit 13. Exhibit 13 was an affidavit signed by four Board members. This Affidavit was executed on November 2 of 1960. That Affidavit represented that the Seward School Board Regulations, all of which were supposedly contained in Exhibit 12, were all adopted "prior to January

1, 1959". The worthlessness of such an Affidavit was pathetically demonstrated by the fact that some pages of Exhibit 12 show on their face that portions of the so-called regulations were adopted *after* January 1, 1959.

For example, Section III-A was adopted on February 16, 1959, as is shown on the face of Exhibit 12. Likewise, Section III-C was adopted on March 10, 1959. And, finally, although other sections of Exhibit 12 *do* show that portions *were* adopted by the Seward School Board at certain times, no such notation follows at all the supposed regulation Section E-7.

At this point we refer the Court to our Memorandum which was prepared for the State Board of Education, Appeal Hearing Committee, and which has been filed herein with the first Petition for Writ of Review filed in this cause. It therefore appears that the State Board has chosen to rest its entire conclusion (that is, pertaining to violation of regulations) on the supposition that an Affidavit which is on its face incorrect was nevertheless true.

5. *The Respondent State Board of Education Was Arbitrary and Capricious.*

The State Board of Education even appealed to the Seward School Board for a certified copy of the Minutes showing the adoption of supposed Regulation E-7. The Seward School Board confessed that no such Minutes were possessed by it. Nevertheless, the Seward School Board has now been affirmed on that point on the basis of an Affidavit, the makers of which were not subjected to cross-examination. Petitioners vehemently object to the introduction into evidence of the Affidavit, Exhibit 13, when at the hearing the petitioners were denied the opportunity to cross-examine the affiants in question. Yet those affiants were present and were available for cross-examination on the subject.

6. *The Petitioners' Claims Are Such That Justice Demands an Immediate Review of the Decision in Question.*

The petitioners are by profession and training teachers.

They have lived at Seward for many years, one of the petitioners has lived there for his entire life-time. Their right and opportunity to pursue their chosen profession and to continue to do so in the area of their homes and their families is now at stake.

Petitioners seek the following relief: That the decision rendered by the State Board of Education on July 26, 1962, be held for naught and that petitioners be ordered reinstated.

Finally, petitioners incorporate herein by reference, as though fully set forth, the entire contents of their Memorandum and Citation of References which was filed with the State Board of Education at the conclusion of that Agency's hearing, as well as those portions of the First Petition for Writ of Review filed herein to the extent that arguments therein made were not rejected by the Court in its Mandate of July 31, 1962.

Respectfully submitted this 14th day of August, 1962.

CONNOLLY & WALTON

By /s/ Peter B. Walton
Peter B. Walton

[Certified of Service dated August 14, 1962.]

[Filed September 13, 1963.]

ORDER DENYING SECOND PETITION FOR WRIT OF REVIEW

The Second Petition for Writ of Review filed herein was argued before me on August 30, 1963; Peter B. Walton, Esq., appearing for petitioners James A. Watts and Walter B. Blue, Theodore Pease, Esq., appearing for respondent Seward School Board; and the court having considered arguments of counsel and the memoranda filed herein as well as exhibits referred to therein,

IT IS HEREBY ORDERED that the Second Petition for Writ of Review be and it hereby is denied.

DATED this 13th day of September, 1963.

/s/ Hubert A. Gilbert
Judge

[Acknowledgement of Service dated September 12, 1963 at 9:05 o'clock A.M.]

[Filed September 24, 1963.]

NOTICE OF APPEAL

PLEASE TAKE NOTICE that petitioners James A. Watts and Walter B. Blue do hereby file their Notice of Appeal from that certain Order entered on September 13, 1963, by the Honorable Hubert A. Gilbert entitled "ORDER DENYING SECOND PETITION FOR WRIT OF REVIEW".

This appeal is taken to the Supreme Court of the State of Alaska.

DATED this 24th day of September, 1963.

CONNOLLY, WALTON & HAMMOND

By /s/ Peter H. Walton
Peter H. Walton

[Filed September 21, 1964.]

File No. 427

JUDGMENT

This matter was considered by the court on appeal from the Superior Court of the State of Alaska, Third Judicial District, at Anchorage.

It Is ORDERED:

The order of the superior court, entered September 13, 1963, is affirmed.

Dated: September 21, 1964.

/s/ Buell A. Nesbett
Chief Justice

/s/ John H. Dimond
Associate Justice

/s/ Harry O. Arend
Associate Justice

[Filed August 21, 1964.]

File No. 427

OPINION

[No. 251 - September 21, 1964]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Hubert A. Gilbert, Judge.

Appearances: Peter B. Walton, of Connolly, Walton & Hammond, Anchorage, for Appellants, Theodore M. Pease, Jr., of Burr, Boney & Pease, Anchorage, for Appellees.

Before: Nesbett, Chief Justice, Dimond and Arend, Justices.

AREND, Justice.

The appeal in this case is from an order of the superior court denying a petition for review from the decision of the Alaska State Board of Education which affirmed the ruling of the Seward School Board that the appellants should not be retained in their position as school teachers at Seward, Alaska.

In March of 1960 the Seward School Board notified the appellants that it had decided not to retain them as teachers in the school system for the next school year, primarily on grounds of immoral conduct. At the request of the appellants a hearing was held before the School Board in April of 1960. This resulted in the Board affirming its previous decision. The appellants then appealed to the State Board of Education which, after a hearing during the summer of 1960, remanded the case to the School Board for a new hearing and with directions to enter findings of fact and conclusions of law on any action taken. The School Board heard the case again in the fall of 1960, reaffirmed its first decision and later entered findings of fact in support of its action.

The appellants appealed a second time to the State Board and that body in May of 1961 once more affirmed the decision of the School Board but without stating the basis for its ruling. The following month the appellants filed a petition for review in the superior court, attacking, for one thing, the failure of the State Board to enter findings of fact and conclusions of law to support its decision. Judge Fitzgerald of the superior court held a hearing on the petition and thereafter remanded the case to the State Board "to make specific findings of fact and enter concrete conclusions" of law. Without holding any further hearings, the State Board responded to the court's mandate on July 31, 1962, by rendering an opinion which sustained the School Board's nonretention of the appellant teachers, on two findings of immoral conduct and one of noncompliance with School Board Regulation E-7 regarding the channeling of complaints by school employees to the School Board.

In August of 1962 the appellants filed a second petition for review in the superior court alleging that the State Board acted arbitrarily and capriciously in that its findings and conclusions were not supported by substantial evidence. The petition was heard by Judge Gilbert who denied it summarily, without oral or written opinion and without setting

forth any findings. The appellants have now appealed to this court and charge that the superior court erred in failing to vacate and reverse the State Board's decision of July 31, 1962.

The immoral conduct complained of as to the appellant Watts was his holding of private conversations with various teachers in which he solicited their support in an attempt to oust the school superintendent from his job. The allegedly immoral conduct of the appellant Blue was his making of a speech to a labor union at Seward in which he stated, "We have been unable to get rid of the [school] Superintendent, so we are going to get rid of the Board," or words to that effect.

The appellants contend that to justify the discharge of a school teacher on grounds of immorality he must be shown to have conducted himself in a manner that would normally shock the conscience of good men and be sufficiently notorious to impair his services as a teacher in the community. To illustrate this concept of immorality the appellants draw examples from case law in which it was held to constitute immoral conduct for a teacher to imbibe intoxicating liquor on the school premises and offer it to students;[1] to misappropriate school funds;[2] to work as a cocktail waitress in a beer garden and, in the presence of school pupils, to drink beer, play a pinball machine and shake dice with customers for drinks;[3] or to make false statements as in a loyalty oath affidavit.[4]

In none of the cases cited by the appellants did the legislatures in authorizing school boards to dismiss teachers for

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[1]Tracy v. School Dist. No. 22, 70 Wyo. 1, 243 P.2d 932 (1952).

[2]Appeal of Flannery, 406 Pa. 515, 178 A.2d 751 (1962).

[3]Horosko v. School Dist., 335 Pa. 369, 6 A.2d 866, *cert. denied*, 306 U.S. 553, 84 L. ed. 465 (1939).

[4]Negrich v. Dade County Bd. of Pub. Instruction, 143 So. 2d 498 (Fla. Dist. Ct. App. 1962).

immorality define that term. This left the courts concerned free to place their own construction upon the word having regard, of course, to the context in which the legislature used it. Thus a New Jersey court stated:

> "Immorality" is not necessarily confined to matters sexual in their nature. In a given context the word may be construed to encircle acts which are *contra bonos mores,* inconsistent with rectitude and the standards of conscience and good morals. Its synonyms are: corrupt, indecent, depraved, dissolute; and its antonyms are: decent, upright, good, right. Webster's International Dict. (2d ed.) [Italics in the original.][5]

The Alaska legislature, however, has seen fit to define "immorality." In providing for notification by the school board to an administrator or teacher of nonretention, "together with a clear statement of cause . . . for such nonretention,"[6] the legislature declared:

> The term "cause . . . shall be based solely upon: (a) Incompetency . . .; or (b) *Immorality which is defined as conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect;* or (c) Substantial non-compliance with the school laws . . . or . . . regulations . . . .[7] [Emphasis supplied.]

It is evident from the legislature's definition of immorality that it did not confine the meaning of the term to conduct which would normally shock the conscience of good men or offend the morals of the community—definitions urged upon us by the appellants. Instead, the legislature

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[5] Appeal of Schneider, 12 N.J. Super. 449, 79 A.2d 865, 870 (App. Div. 1951).

[6] § 37-5-11 ACLA Cum. Supp. (1957) [Now AS 14.20.140 and 14.20.150].

[7] § 37-5-12 ACLA Cum. Supp. (1957) [Now AS 14.20.170].

adopted a much broader meaning for the word "immorality" as cause for the nonretention of a school teacher, for it stated that "immorality" should encompass any "conduct of the person tending to bring the individual concerned . . . into public disgrace or disrespect."

In the case at bar the Seward School Board found that the appellant Watts had solicited other teachers to join in an attempt to oust the school superintendent from his job and that Watts' conduct tended to bring him and the teaching profession into public disgrace or disrespect. They made a similar finding with respect to the conduct of the appellant Blue in making the speech to the labor union about getting rid of the School Board. The State Board of Education affirmed these findings and concluded that the conduct of the appellants constituted immorality as defined in the statute and provided sufficient grounds for their nonretention. The State Board further found that there was substantial evidence to support the School Board's findings.

Although there was some conflict in the testimony and although the appellants claim that the trial court should have reversed and vacated the decision of the State Board as not being supported by substantial evidence and as being contrary to law, we fail to find any error committed in the proceedings below. The School Board was the original fact finder and there was substantial evidence in the record to sustain their findings and the additional findings and legal conclusions of the State Board.

In our opinion the tactics shown to have been employed by the appellants to get the school superintendent and members of the School Board removed from their positions of responsibility in the community had a tendency to bring the appellants and the teaching profession into public disgrace or disrespect and sustained the administrative agency findings to that effect.[8]

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[8]See Keiner v. City of Anchorage, 378 P.2d 406 (Alaska 1963), in which we held at page 411 that the findings of an administrative

We agree with the statement made by the court in *Horosko v. School District*[9] that

> It has always been the recognized duty of the teacher to conduct himself in such way as to command the respect and good will of the community, though one result of the choice of a teacher's vocation may be to deprive him of the same freedom of action enjoyed by persons in other vocations. . . .[10]

We find it unnecessary to rule on the finding below that further cause for nonretention of the appellants was their alleged noncompliance with the School Regulation E-7 set forth in the margin.[11] However, for the guidance of those in the teaching profession we suggest that it will be in the best interests of the school children, the teachers and the community generally for teachers with grievances to follow an orderly procedure of seeking redress first at the superintendent level and then at the school board level.

The appellants voiced a broad and general claim in their brief on appeal that their constitutional rights to assemble

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agency should not be reversed "if in the light of the whole record they are supported by substantial evidence, i.e., such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

[9] 335 Pa. 369, 6 A.2d 866, *cert. denied*, 306 U.S. 553, 84 L. ed. 465 (1939).

[10] *Id.* at 868.

[11] Regulations E-7 of section I of the Seward School Board regulations provides as follows: "Grievances, complaints and communications from employees shall be submitted to the Board through the Superintendent. Any employee or group of employees may at any time appeal to the Board."

Another regulation, E-9, states that "Employees or groups of employees desiring to address the Board shall address their communication to the Superintendent and not to individual members of the Board, except that copies of any communication may be sent to all Board members."

and speak freely have been abridged in this case and that they have been deprived of their personal liberties and property rights without due process of law. They treat the subject in a very cursory fashon and cite us to no case law in support of their claim. Under these circumstances we need not consider the point.

For the foregoing reasons the order of the superior court denying the appellants' second petition for review is affirmed.

[Filed October 2, 1964.]

File No. 427

MANDATE

To: Superior Court of the State of Alaska,
Third Judicial District, at Anchorage.

James A. Watts and Walter B. Blue filed an appeal from a judgment of the Superior Court, Third Judicial District, at Anchorage, in Civil Action No. 61-728, entitled "JAMES A. WATTS and WALTER B. BLUE, Petitioners, vs. SEWARD SCHOOL BOARD and BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, Respondents." The case was heard by this court on April 20, 1964. On September 21, 1964, the court filed its written opinion and entered judgment affirming the judgment of the superior court.

It Is ORDERED:

1. The judgment of the superior court, entered September 13, 1963, is affirmed.

2. Appellees shall recover from appellants costs and attorney's fees as shown below.

WITNESS The Honorable Buell A. Nesbett, Chief Justice of the Supreme Court, State of Alaska, this 2nd day of October, 1964.

Costs and Attorney's Fees:

Duplicating Appellees' Brief	$ 102.50
Attorney's Fees	300.00
Total	$ 402.50

JOSEPHINE M. McPHETRES
Clerk, Supreme Court,
State of Alaska

[SEAL]

SUPREME COURT OF THE UNITED STATES

WATTS ET AL. *v.* SEWARD SCHOOL BOARD ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA.

No. 923. Decided May 3, 1965.

PER CURIAM.

Petitioners Watts and Blue were dismissed from their positions as school teachers in Seward, Alaska, on grounds of "immorality," which under Alaska Statute § 14.20.170 was defined as "conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect." Petitioner's dismissal was upheld by the Alaska Superior Court (Third Judicial District), and on appeal the Alaska Supreme Court affirmed the Superior Court's decision. 395 P. 2d 372. The Alaska Supreme Court noted that "[t]he immoral conduct complained of as to the appellant Watts was his holding of private conversations with various teachers in which he solicited their support in an attempt to oust the school superintendent from his job. The allegedly immoral conduct of the appellant Blue was his making of a speech to a labor union at Seward in which he stated, 'We have been unable to get rid of the [school] Superintendent, so we are going to get rid of the Board,' or words to that effect." 395 P. 2d, at 374. The Alaska Supreme Court held that this conduct "had a tendency to bring the [petitioners] .... and the teaching profession into public disgrace or disrespect," within the terms of the statute, 395 P. 2d, at 375, and it therefore sustained their dismissal. Petitioners contend that their dismissal for engaging in the conduct here described unconstitutionally infringes their rights to political expression guaranteed by the First and Fourteenth Amendments to the United States Constitution.

[Filed May 6, 1965]

We need not consider petitioners' contentions at this time, for since their petition for certiorari was filed Alaska has amended its statutes in this area. House Bill 27, adopted by the Alaska Legislature and signed by the Governor on March 31, 1965, now defines "immorality" as grounds for revocation of a teaching certificate, as "the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude." Moreover, Alaska statute § 14.20 has been amended by the addition of a new section which reads:

> "Sec. 14.20.095. Right to Comment and Criticize Not to be Restricted. No rule or regulation of the commissioner of education, a local school board, or local school administrator may restrict or modify the right of a teacher to engage in comment and criticism outside school hours, relative to school administrators, members of the governing body of any school or school district, any other public official, or any school employee, to the same extent that any private individual may exercise the right."

This Court has held that supervening changes in state law that may be relevant to the disposition of a case may require that the cause be remanded for appropriate action by the state court. See, *e. g.*, *Missouri ex rel. Wabash R. Co.* v. *Public Service Comm'n*, 273 U. S. 126, 131. Cf. *Trunkline Gas Co.* v. *Hardin County*, 375 U. S. 8. Accordingly, it is appropriate to allow the Alaska court to consider the effect of the new Alaska statutes upon this case. To that end, the petition for certiorari is granted, the judgment of the Supreme Court of Alaska is vacated, and this case is remanded to that Court for such further consideration as may be deemed appropriate by that Court under Alaska law.

Vacated and remanded.

[Filed June 3, 1965]

UNITED STATES OF AMERICA, SS:
THE PRESIDENT OF THE
UNITED STATES OF AMERICA

[Seal]

To the Honorable the Judges of the Supreme Court of the State of Alaska,

GREETINGS:

WHEREAS, lately in the Supreme Court of the State of Alaska, there came before you a cause between James A. Watts and Walter B. Blue, appellants, and Seward School Board and Board of Education, Appeal Hearing Committee, appellees, No. 427, wherein the judgment of the said Supreme Court was duly entered on the 21st day of September A.D. 1964, as appears by an inspection of the transcript of the record of the said Supreme Court which was brought into the SUPREME COURT OF THE UNITED STATES by virtue a writ of certiorari, as provided by act of Congress.

AND WHEREAS, in the October Term, 1964, the said cause came on to be heard before the SUPREME COURT OF THE UNITED STATES on the said transcript of record:

ON CONSIDERATION WHEREOF, it was ordered and adjudged on May 3, 1965, by this Court that the judgment of the said Supreme Court in this cause be vacated with costs, and that this cause be remanded to the Supreme Court of the State of Alaska for further consideration not inconsistent with the opinion of this Court.

IT WAS FURTHER ORDERED that James A. Watts, et al., recover from the Seward School Board et al. One Hundred Dollars ($100) for their costs herein expended.

NOW, THEREFORE, THE CAUSE IS REMANDED to you in order that such proceedings may be had in the said cause,

in conformity with the judgment of this Court above stated, as accord with right and justice, and the Constitution and laws of the United States, the saie writ notwithstanding.

Witness the Honorable EARL WARREN, Chief Justice of the United States, the twenty-eighth day of May, in the year of our Lord one thousand nine hundred and sixty-five.

Costs of James A. Watts et al.:
Clerk's costs $100

/s/ JOHN C. DAVIS
Clerk of the Supreme Court
of the United States

[Filed June 3, 1965]

ORDER ALLOWING CERTIORARI
[Filed May 3, 1965]

The petition herein for a writ of certiorari to the Supreme Court of the State of Alaska is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Seal]

/s/ JOHN C. DAVIS
Clerk of the Supreme Court
of the United States

A true copy
Test:

[Filed December 7, 1966.]

File No. 427

JUDGMENT

This matter was considered by the court on remand from the Supreme Court of the United States for reconsideration in the light of Alaska statutes enacted subsequent to this court's original decision.

It Is ORDERED:

1. That the Seward School Board's conclusion that appellants were guilty of substantial noncompliance with Board Regulation E(7) is affirmed as a separate and independent cause for their nonretention.

2. That the Seward School Board's original conclusion that appellants were guilty of immorality within the meaning of the statute as it then defined that term, for their part in compiling, reproducing and distributing the Open Letter containing false statements disparaging of the Superintendent is affirmed as a cause for their nonretention.

3. That the Seward School Board's conclusion that appellant Watts was guilty of immorality, as it was then defined by statute, for his activities in soliciting teachers to join in a private move to oust the Superintendent is affirmed as a cause for his nonretention.

4. That the Seward School Board's conclusion that appellant Blue's speech to the longshoremen's union constituted immorality, as it was then defined by statute, is set aside for not being supported by substantial evidence.

Dated: December 7, 1966.

/s/ Buell A. Nesbett
Chief Justice

/s/ John H. Dimond
Associate Justice

Associate Justice

File No. 427

OPINION

[No. 380 - December 7, 1966]

On remand from the Supreme Court of the United States for reconsideration, in the light of Alaska statutes enacted subsequent to this court's original decision.

Appearances: Joe P. Josephson, Josephson & Strachan, Anchorage, for Appellants. Warren W. Matthews, Jr., Burr, Boney & Pease, Anchorage, for Appellees.

Before: Nesbett, Chief Justice, Dimond and Rabinowitz, Justices.

NESBETT, Chief Justice.

This case is before us for the second time.

In our Opinion No. 251 of September 21, 1964,[1] we upheld the action of appellee Seward School Board in refusing to renew appellants' teaching contracts in the Seward Public Schools for 1959-60 on the ground that appellants had engaged in immoral conduct within the statutory definition of that term in SLA 1957, chapter 71, section 2.[2] We noted

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[1] 395 P.2d 372 (Alaska 1964).

[2] SLA 1957, chapter 71, section 1 provided that teachers whose contracts were not to be renewed for the following year should be notified in writing on or before March 15 with a clear statement of cause including a bill of particulars.

SLA 1957, chapter 71, section 2, as amended, stated:

Definition of Cause: The term 'cause' as used in section I above shall be based solely upon:
(a) Incompetency which is defined as the inability or the unintentional or intentional failure to perform one's legitimate duties in a satisfactory manner; or (b) Immorality which is defined as conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect; or (c) Substantial noncompliance with the school laws of the Territory or such regulations of the Territorial Board of Education or any other governmen-

in that opinion that although appellants had made the broad general claim in their brief that their constitutional rights to assemble and speak freely had been abridged and that they had been deprived of their personal liberties and property rights without due process of law, they had failed to treat the matters adequately in their briefs or to cite any case law in support thereof. Accordingly, we declined to attempt to pass on those points.[3]

Appellants petitioned the United States Supreme Court for a writ of certiorari contending that their dismissal amounted to an unconstitutional infringement of their rights to political expression guaranteed by the First and Fourteenth Amendments to the United States Constitution.

Subsequent to the publication of our Opinion No. 251 the Alaska Legislature in 1965 enacted AS 14.20.095 providing that no rule or regulation of certain education officials may restrict or modify a teacher's right to comment and criticize public education officials, outside of school hours, to the same extent that a private individual might do so.[4] In addition, the Alaska Legislature in 1965 amend-

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tal agency as are applicable or of the employing school district; except, that any necessary reduction of staff occasioned by a decrease in school attendance of the district may warrant, in the absence of any of the above reasons, the non-retention of a teacher.

Since recodification of Alaska laws this section has become AS 14.20.170.

[3]No claim of infringement of constitutional rights had been included in appellants' statement of points nor in their specifications of error.

[4]AS 14.20.095 states:

Right to comment and criticize not to be restricted. No rule or regulation of the commissioner of education, a local school board, or local school administrator may restrict or modify the right of a teacher to engage in comment and criticism outside school hours, relative to school administrators, members of the governing body of any school or school district, any other public official, or any school employee, to the same extent that any private individual may exercise the right.

ed the statute which stated the causes for which a teacher's certificate might be revoked. Insofar as is pertinent this amendment simply added a definition of "immorality", defining it as the commission of an act which, under the laws of the state, constitute a crime involving moral turpitude.[5]

In its per curiam decision remanding the case,[6] the United States Supreme Court cited the decisions noted below which hold that supervening changes in state law that may be relevant to the disposition of a case may require that the cause be remanded for appropriate action by the state court,[7] and stated that it was granting certiorari for that purpose.

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[5]Before amendment, AS 14.20.090 stated:

Revocation of certificates. (a) The department may revoke a certificate for any of the following causes:

(1) immorality,

(2) violation of written contract,

(3) intemperance,

(4) crime against the laws of the state, or

(5) unprofessional conduct.

(b) No certificate may be revoked until the accused has been given an opportunity to be heard. (§ 37-5-10 ACLA 1949)

AS 14.20.090, as amended by SLA 1965, chapter 41, now reads:

Causes for revocation. The department may revoke a certificate for any of the following causes:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teachers customary duties in a satisfactory manner;

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

(3) substantial noncompliance with the school laws of the state or the regulations of the department.

[6]Watts v. Seward School Board, 381 U.S. 126, 14 L.Ed.2d 261, (1965).

[7]Missouri *ex rel.* Wabash Ry. Co. v. Public Service Comm'n, 273 U.S. 126, 131, 71 L.Ed. 575, 577 (1927). Cf. Trunkline Gas Co. v. Hardin County, 375 U.S. 8, 11 L.Ed.2d 38 (1963).

We have for our assistance in reconsidering the case, the original briefs submitted by the parties, as well as additional briefs submitted at the request of this court subsequent to remand. Also to be considered at this time is the fact that since the last time the briefs were filed herein and on the 15th day of April 1966, the Alaska Legislature enacted an amendment to AS 14.20.170 (2) redefining immorality as a ground for non-retention of a teacher as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude.[8]

In preparation for reconsideration of the case we requested that counsel brief the question of whether appellants' dismissal from their positions as school teachers infringed upon their rights to political expression guaranteed by the First and Fourteenth Amendments to the United States Constitution, as well as the effect on the case of the statutory changes mentioned by the United States Supreme Court in granting certiorari.

Counsel have obliged. In addition, appellants have requested that the appeal be considered de novo in the light of recent United States Supreme Court decisions. Appellee has again briefed and urged us to determine the question of whether the Seward School Board's conclusion that appellants had substantially failed to comply with Seward School Board Regulation E(7) was not a sufficient independent cause for their nonretention. Although this point was briefed and presented when this case was last before us, we found it unnecessary to consider it in view of the disposi-

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[8]This amendment, SLA 1966, chapter 104, states in part that:

. . . AS 14.20.170(2) is repealed and re-enacted to read:

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude . . . .

tion then made of the case. We shall consider and pass on it in this decision.

In our reconsideration of the case it was eventually found necessary to order the record supplemented by the transcripts of the various proceedings had before the Seward School Board and the State Board of Education, Appeals Committee, as well as all of the exhibits received at those hearings. These transcripts were received late in May and the exhibits on June 10, 1966.

We shall consider first the effect subsequent statutory changes may have had upon our original holding that appellants' conduct was immoral within the meaning of Alaska's statute.

In order to consider this question in perspective it is necessary to first determine the type of conduct the legislature originally intended to cover by its definition of "immorality".

The use of the term by the legislature must be considered in context. When the facts of this case arose in 1959, SLA 1957, chapter 71, section 2,[9] listed and defined the three causes for which a teacher could be nonretained as:

> (a) Incompetency - defined as the inability or failure to satisfactorily perform one's duties,
>
> (b) Immorality - defined as 'conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect', and
>
> (c) Substantial noncompliance with the school laws of the Territory or regulations of the Territorial Board of Education.

Of the three causes for nonretention, "incompetency" and "substantial noncompliance" are reasonably specific. "Immorality", on the other hand, is broad and covers any

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[9]Subsequently, the subject matter of AS 14.20.170. See also Section 37-5-12 ACLA Cum. Supp. 1958.

and all conduct of the teacher which tends to bring disgrace or disrespect upon the teacher or the teaching profession. This definition would include all conduct from the commission of the most heinous felony down the scale of infamy to social misbehavior. The point in a teacher's conduct beyond which his behavior would tend to bring disgrace or disrespect upon him or his profession, would be one of degree depending upon the rules of society and to some extend upon the mores of the particular community.

Since it does cover such a broad range of conduct, it seems quite likely that the Alaska Legislature originally intended that "immorality" be a "catch-all" cause for nonretention, intended to serve the same purpose as that mentioned in *Beilan v. Board of Education*[10] where the United States Supreme Court stated in 357 U.S. at 406, 2 L.ed.2d at 1420:

> However, the Pennsylvania statute, unlike those of many other States, contains no catch-all phrase, such as 'conduct unbecoming a teacher,' to cover disqualifying conduct not included within the more specific provisions. Consequently, the Pennsylvania courts have given 'incompetency' a broad interpretation.

In a footnote the court cited the "catch-all" provisions of the Kentucky statutes, as being "conduct unbecoming a teacher" and "during good behavior"; of Massachusetts as "conduct unbecoming a teacher" and "other good cause"; of California as "evident unfitness for service" or "unprofessional conduct"; of Illinois as "other sufficient cause" and of Indiana as "other good and just cause".[11]

The propriety of defining "immorality" as the legislature did has been questioned indirectly by appellants in their briefs and directly by the Alaska Legislative Council in an annual report to the legislature. The Council pointed out

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[10] 357 U.S. 399, 2 L.Ed.2d 1414 (1958).

[11] *Id.* at 406, N. 8, 2 L.Ed.2d at 1420.

that the removal of a teacher for immoral conduct has serious implications for the teacher and suggested amendment of the provision by substitution of a definition of "immoral" in keeping with the commonly accepted sense of the term.[12]

If the original intent of the Alaska Legislature in defining immorality as it did was to provide a "catch-all" provision covering all types of conduct tending to bring public disgrace or disrespect upon the teacher or his profession, not covered by "incompetency" and "substantial noncompliance" with regulations, as seems likely, and it is desired to remove any possibility of unnecessary stigma from attaching by reason of the title of the provision, then it would seem that the reverse of the Legislative Council's recommendation should be followed. That is, the designation or title of immorality should be removed from the catch-all definition of conduct and a designation such as "conduct unbecoming a teacher" be substituted. The definition would then cover immorality in all of its aspects, including all shades of unacceptable social misbehavior, and would continue to serve the useful purpose of a "catch-all" cause which so many states have found to be a necessity in this area of legislation.[13]

The use of the term "immorality" is not new to legislation governing the teaching profession. In *Appeal of Batrus*[14] a statute provided that the only valid causes for termination

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[12]"Legislative Oversight of the Administration of Statutes" p. 21-23.

[13]In Board of Education v. Swan, 41 Cal. 2d 546, 261 P.2d 261, 266 (1953), *cert. denied*, 347 U.S. 937, 98 L.Ed. 1087 (1954) the court was considering California's "catchall" cause of "unprofessional conduct" and quoted from Goldsmith v. Board of Education, 66 Cal. App. 157, 168, 225 P. 783, 787 (1924) in part as follows:

> 'the calling (of a teacher) is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous, that they are incapable of enumeration in any legislative enactment.'

261 P.2d at 266. See text accompanying note 58 *infra* for full quote.

[14]148 Pa. Super. 587, 26 A.2d 121 (1942).

of a teacher's contract were: immorality, incompetency, intemperance, cruelty, persistent negligence, mental derangement and persistent and wilful violation of school laws. The court held that where a teacher executed false affidavits, misrepresented and withheld important information from her employer she was guilty of

> . . . 'such a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate' and therefore immoral.[15]

In *Negrich v. Dade County Bd. of Pub. Instruction*[16] a teacher has made a false statement in his application for a teaching position and was suspended therefor seven years later. The court held that the conduct amounted to immorality since it ". . . offends the morals of the community and was inconsistent with moral rectitude".[17] In our first opinion we mentioned *Appeal of Schneider*,[18] where the court said:

> 'Immorality' is not necessarily confined to matters sexual in their nature. In a given context the words may be construed to encircle acts which are *contra bonos mores*, inconsistent with rectitude and the standards of conscience and good morals. Its synonyms are: corrupt, indecent, depraved, dissolute; and its antonyms are: decent, upright, good, right. Webster's International Dict. (2d ed.)[19]

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[15] 26 A.2d at 124.

[16] 143 So. 2d 498 (Fla. App. 1962).

[17] 143 So. 2d at 501.

[18] 12 N.J. Super. 449, 79 A.2d 865 (App. Div. 1951).

[19] 79 A.2d at 870. For other cases construing immorality see: Tracy v. School Dist. No. 22, 70 Wyo. 1, 243 P.2d 932 (1952) (imbibing liquor on school premises); Appeal of Flannery, 406 Pa. 515, 178 A.2d 751 (1962) (misappropriating funds); and Horosko v. School Dist., 335 Pa. 369, 6 A.2d 866, *cert. denied*, 308 U.S. 553, 84 L.Ed. 465 (1939).

In any event, the choice of the designation of "immorality" as a cause for nonretention was the legislature's. For the purposes of this case we must accept that designation and the legislative definition provided. We pass now to consider whether the conduct which the Seward School Board found that appellants had engaged in was such that it tended to bring appellants or the teaching profession into public disgrace or disrespect. In this connection we have reviewed the transcripts of the various proceedings had before the Seward School Board and the Board of Education, Appeals Committee.

The controversy was set off by letters from the Seward School Board to appellants containing notices of nonretention and bills of particulars which were delivered in March of 1960. Appellants were advised that one of the reasons for their nonretention was that they were guilty of acts of immorality tending to bring them and the teaching profession into disgrace of disrespect by:

(1) Assisting in the printing and distribution of false, distorted, and misleading statements against the Superintendent of the Seward Public Schools with the intent of injuring his professional standing and destroying community and pupil confidence in the administration of the schools.

(2) By carrying to the people of the community and personally signing a petition for recall of the Seward School Board on false charges.

(3) By appearing before a union meeting in Seward and making false and misleading statements relating to the actions of the Seward School Board and making a statement similar to:

"We have been unable to get rid of the Superintendent, so we are going to get rid of the Board." (Applicable to Appellant Blue only.)

(4) By taking part in and encouraging clandestine activities of teachers with the purpose of ousting the Superintendent. (Applicable to Appellant Watts only.)

Appellants appealed their notices of nonretention. At the hearing held before the Seward School Board on April 8, 1960 both sides were represented by counsel and the entire hearing was recorded and transcribed. Both appellants admitted taking part in the printing and distribution of an Open Letter to the Seward School Board, introduced as Exhibit 7, and which reads as follows:

Seward, Alaska
May 18, 1959

AN OPEN LETTER TO THE SEWARD SCHOOL BOARD
Seward, Alaska

Gentlemen:

A Seward Branch of the American Federation of Teachers, affiliated with the AFL-CIO, has applied for and received confirmation of its charter. The AFT is a recognized organization of professional teachers and thereby commands recognition by the Seward School Board.

The Seward Local takes this means of informing the Seward School Board (and the public) of our stand in the current struggle for a good school. We hold that incidents occuring during the last year have reached such proportions as to be definitely detrimental to the morale of our teaching staff and the effectiveness of the local educational system.

1. Illegal non-retention of three teachers, reflecting on the professional reputations of those involved, in violation of Section 138 of the State School Laws, which was later corrected only after the insistence of the Seward Local of the American Federation of Teachers in a public hearing with legal counsel.
2. It is a legitimate duty of administration to maintain or create harmony in the school, and the tension noted in the pupils, and the 'friction', which some of them were aware of, does not fit this requirement.
3. Non-compliance with the fire drill regulation requir-

ing ten fire drills per year (Sec. III, b, 4, Page 9, Rules and Regulations for the school staff/local/). This applies to both school buildings, one of which is a dangerous building.

4. Ordering the custodian, Jesse Moore, to do technical electrical work beyond his skill in a dangerous building.

5. On different occasions threatening to 'get one third of the faculty this year, and half of the remainder next year' in an apparent attempt to 'purge' the faculty. Why Mr. Fabricius should have had this preconceived and hostile attitude is unknown. Teachers have raised the question, 'How can one man, a stranger coming into a town, have the right to tamper with the livelihood of teachers, taxpayers, property owners, and upset a school system in a single year's time?' More than bringing teachers and others into public disgrace and disrespect, actions cited have jeopardized the property and investments of several people, without giving legitimate cause and without regard for their feelings and personal rights.

6. Provoking the resignation of an outstanding teacher by forbidding him to ride the school bus in what *seems* to be a violation of the intent of the Rules and Regulations Affecting School Transportation, Page 13, Item 31, Laws of the Territory, etc., the apparent authoritarian mishandling of this resignation impairing the teacher's chances for a teaching position elsewhere. This action has placed the School Board and the taxpayers in the possible position of a suit to secure payment of the contract.

7. Dictatorial treatment of teachers, forcing them into the choice of submitting and taking it at the loss of personal dignity, or fighting back in a public spectacle.

8. Speaking in a peremptory [sic] and threatening manner in the presence of a pupil, to Mr. Smith.

9. Two specific instances have occurred violating the requirement to provide Educational Leadership in the local Regulations.

   a. Neglect to permit the development of a proper music program.

   b. Information relative to the Drama Festival held at Palmer was not made known to the teachers or the student body, although the school had participated ardently and with distinction the previous year.

   c. This same requirement is violated in overtly or covertly driving out Mr. Conder, Mr. Swick, Mr. Smith, and possibly others who had a definite contribution to make to the functions of the school.

10. Firing of Mrs. Davis apparently on the basis of personal dislike rather than for dereliction of duty or inefficiency. This resulted in public discussion reflecting adversely on the school, and placed Mrs. Davis in the position of consulting an attorney relative to the collection of salary allegedly due her.

We have, or can secure, sworn statements on every item.

We, the Seward Local of the American Federation of Teachers, have made every effort to secure correction of illegal, unethical, and unfair acts on the assumption that when the School Board knew of them it would take corrective action.

On May 8, 1959, in a public meeting with the School Board, compliance with the law in the matter of non-retention was secured only after great opposition and protest that the 'law had not been tested, and some educators do not regard it as a good law.'

At this same time we withheld information contained in this letter in order to keep the school functioning through the end of the school year and commencement.

We then invited the School Board to meet with us privately

to clarify the items here presented, to give Mr. Fabricius and the School Board the opportunity to reply, and to determine the quality of the list of administrative statements and actions. This, in effect, was giving Mr. Fabricius and the Board the opportunity for self defense which was denied the teachers who were not given contracts in April. We arranged a meeting time to suit the convenience of the Board, and our invitation was accepted.

With the exception of Mr. Howell, President, the Seward School Board DID NOT APPEAR, nor was the administration represented.

Therefore we request an immediate special open School Board meeting Tuesday night, May 19, for the purpose of presenting to the Board and the public particulars of administration in the Seward Public Schools, with announcement of the meeting by the Board over Station KIBH. At this time the Local shall demand immediate, guaranteed, substantial improvement in administrative policies including:

1. Validation of contracts offered to formerly non-retained teachers and those affected by additional education requirements.
2. Correction of the situation regarding Mr. Smith and Mr. Swick.
3. Avoidance of unreasonable reassignment of teachers wherever possible.
4. Conformity with standard ethical and professional standard personnel policies, such as outlined by AFT and NEA, especially regarding:
   a. Notification of teachers before their written notice of non-retention.
   b. Attempting to give constructive criticism to teachers, in an effort to correct and help personnel.

It is our sincere hope that, at this meeting, we can reach mutually acceptable solutions to the many problems facing us at this time.

Very truly yours,

SEWARD LOCAL
AMERICAN FEDERATION
OF TEACHERS

Copies: To patrons of the
Seward School.

Appellants admitted that they had not presented the matters charged in the letter to the Superintendent as grievances. Upon completion of the hearing the Seward School Board affirmed its decision of nonretention and appellants appealed to the State Board of Education, Appeals Committee. After a hearing, the Appeals Committee remanded the case to the Seward School Board with directions to conduct a new hearing and to enter findings of fact and conclusions of law.

The Seward School Board then held a second hearing commencing on November 4, 1960. Both sides were represented by counsel and numerous witnesses were heard. The transcript of this hearing contains 421 pages.

Upon completion of its second hearing and pursuant to the directions of the Appeals Committee, the Seward School Board entered findings and conclusions.

In its amended decision and findings of fact the Seward School Board found as follows with respect to its charges of immorality:

> 11. The Board finds that Item 4 of Board Exhibit 7 referred to an altercation between Superintendent George Fabricius and the School Custodian, Jesse Moore, which was aired before the School Board. Mr. Moore was not required to do technical electrical work beyond Mr. Moore's ability.

12. Item 5 of Board Exhibit 7 is based on an allegation by James Watts that Superintendent George Fabricius told him that he would 'get one-third of the faculty this year and half of the remainder next year.' Superintendent George Fabricius did not make any such statements to Mr. Watts, nor to any other faculty member, and the charge to that effect is false. (The Board resolves the direct conflict in testimony between Mr. Fabricius and Mr. Watts on this point in favor of Mr. Fabricius, crediting the testimony of Mr. Fabricius and discrediting the testimony of Mr. Watts. This decision is based in part upon observation of the demeanor of the two witnesses.)

13. The reference in Item 5 of Board Exhibit 7 to the jeopardizing by Superintendent George Fabricius of the property investments of several people without legitimate cause referred to the nonretention of a Seward teacher named Charles Brown. Mr. Brown was not retained by the Seward School system for the school year 1959 through 1960 for cause, because of his inability to maintain discipline among his students. The statement in Item 5 of Board Exhibit 7 to the effect that Superintendent George Fabricius jeopardized the property investments of several people without legitimate cause is false.

14. Item 6 of Board Exhibit 7 is a reference to the resignation of former school teacher Jack Conder. Mr. Conder tendered his resignation after an argument with Superintendent George Fabricius, during the course of which he was told by Superintendent George Fabricius that he would have to remain at school until 4:20 P.M., as required of all teachers, and that he would not be permitted to leave at 4:00 P.M. to ride the school bus home. Superintendent George Fabricius did not forbid Mr. Conder to ride the school bus, in violation of rules and regulations effecting school transportation. The statement in Item 6 of Board Exhibit 7 that the above described incident seemingly constituted a violation of the intent of the rules and regulations affecting school transportation was false.

15. Item 8 in Board Exhibit 7 refers to an incident occurring during the Spring of 1959 in which a teacher named Smith argued with Superintendent George Fabricius about the conduct of a study hall. We find, on the uncontroverted evidence, that Mr. Smith lost his temper with Superintendent George Fabricius and resigned. We find on all of the evidence that Superintendent George Fabricius did not act in a preemptory [sic] or threatening manner. We find, accordingly, that the statement in Item 8 Board Exhibit 7 is false.

16. Item 9,c of Board Exhibit 7 charges that Mr. Conder, Mr. Swick and Mr. Smith were "driven out." We find on the record as a whole that, Mr. Smith and Mr. Conder tendered their resignations and Mr. Swick, by his own actions, failed to renew his contract and was, therefore, terminated. The charge that the above three teachers were driven out is not supported by the record and we find that the charge is false.

17. The distribution of Board Exhibit 7, containing the false charges described in Findings 11, 12, 13, 14, 15 and 16, to the general public of Seward had a tendency to bring the teaching profession into public disgrace and disrespect, and constituted an act of immorality, as defined in Section 37-5-12, ACLA, 1949, as amended.

18. The distribution of Board Exhibit 7, containing false charges described in Findings 11, 12, 13, 14, 15 and 16, to the general public of Seward by Mr. Watts and Mr. Blue tended to bring Mr. Watts and Mr. Blue into public disgrace of disrespect.

19. On or about April 28, 1959, James Watts asked Mr. and Mrs. Benjamin Frampton, who at that time were members of the faculty of Seward Public Schools, if they would go along with a group of which Watts was a representative and whose purpose was to oust Mr. Fabricius from his job as Superintendent of Schools. (The Board resolves the conflict in testimony between Mr. & Mrs. Frampton and Mr. Watts in favor of Mrs. [sic] & Mrs.

Frampton, crediting their testimony and discrediting that of Mr. Watts. This decision is based in part on the demeanor of the individuals.)

20. In the Spring of 1959, James Watts solicited Monty H. Richardson, who at that time was a school teacher in the Seward Public Schools, to join a group the purpose of which was to get rid of Mr. Fabricius as Superintendent of Schools. (The School Board resolves the conflict in testimony between Mr. Richardson and Mr. Watts in favor of Mr. Richardson, by crediting Mr. Richardson's testimony and discrediting the testimony of Mr. Watts. This decision is based in part upon the demeanor of the two witnesses.)

23. During a period beginning on or about May 28, 1959, and continuing into the month of June, 1959, James Watts and Walter B. Blue aided in preparing, distributing and soliciting signatures for a petition for the recall of the Seward School Board members.

26. In an attempt to gain popular support for a recall vote involving the Seward Public School Board members, Walter B. Blue made a speech to the International Longshoremen & Warehousemen's Union in Seward, Alaska, in which he stated, "We have been unable to get rid of the Superintendent, so we are going to get rid of the Board," or words to that effect.

In conclusions based upon its findings the Seward School Board found that appellants' conduct tended to bring them and the teaching profession into public disgrace or disrespect and affirmed its decisions of nonretention.

Appellants appealed and after a hearing the State Board of Education, Appeals Committee, on May 26, 1961, found in effect that the order of nonretention of the Seward School Board was supported by its findings and that its findings were supported by the evidence. The Board's decision was affirmed. Appellants then prosecuted a writ of review to the superior court.

In a mandate dated December 28, 1961, the superior court vacated the decision of the Appeals Committee and remanded the matter to the Committee to make specific findings of fact and conclusions as to the charges of immoral conduct and as to whether Regulation E(7) of the Seward School Board was ever duly adopted and if so, the details of its violation by appellants. It had been urged by appellants that there was not substantial evidence before the Seward School Board to support its finding that many of the charges made in the Open Letter were false. Upon this basis appellants were asking that review be granted and the Board record be ordered up for review. The superior court granted review as requested but did not order any part of the Board record brought up for review to determine whether there was substantial evidence to support the Board's findings. Without reviewing the transcripts of proceedings the superior court concluded as a matter of law and stated in its mandate that circulation by appellants of the Open Letter and recall petition were not immoral conduct within the meaning of the statute.

The Appeals Committee reviewed the record and in its opinion of July 31, 1962 recognized and stated at the outset that the superior court's mandate, concluding as it did that as a matter of law circulation of the Open Letter was not immoral conduct within the meaning of the statute, foreclosed it from further considering that evidence as support for the Seward School Board's finding that the act amounted to immoral conduct. The Committee then reviewed the remainder of the evidence in support of the Board's findings Nos. 19-22 and 26-28. It found substantial evidence in support of the findings and affirmed the Board's conclusions that appellants' conduct in urging teachers Frampton and Richardson to join a group which had the purpose of attempting to oust the Superintendent and the making of an inflammatory speech to the members of the I.L.W.U. tended to bring appellants and the teaching profession into disgrace or disrespect and constituted "immorality" as defined by statute.

A second writ of review was filed in the superior court and denied without opinion or explanatory order.

We have reviewed the record and the testimony elicited at the various hearings.

The Open Letter was distributed to the general public. Simultaneously copies were delivered to the members of the Seward School Board and Superintendent Fabricius. The letter requested an immediate special open meeting with the school board on the night of May 19 for the purpose of presenting to the Board and the public "particulars of administration in the Seward Public Schools." The meeting was to be announced over radio station KIBH and it was stated that "at this time the Local shall demand immediate, guaranteed, substantial improvement in administrative policies."

Of the various charges made in the letter, the Seward School Board found six to be false.[20] Appellant Blue admitted that he had composed the original Open Letter, which was altered in some respects before being reproduced and distributed. Both appellants admitted taking an active part in the reproduction and distribution of the letter to the general public. There was some conflict in the testimony as to the truth of most of the charges, as is indicated in the Board's findings, which contain transcript citations.

The function of the Seward School Board was to conduct a fair hearing, judge the credibility of the witnesses, weigh and appraise the evidence, determine the issues of fact and announce its conclusions. In *Keiner v. City of Anchorage*[21] we held that a "board's findings should not be reversed if in the light of the whole record they are supported by substantial evidence, i.e., such relevant evidence as a reasonable mind might accept as adequate to support a conclusion".[22]

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[20]See text *supra* at pages 17, 18 and 19 where these findings of the School Board are set out.

[21]378 P.2d 406 (Alaska 1963).

[22]*Id.* at 411.

Even though there was some conflict in the evidence in the present case as to whether the appellants' conduct constituted "immorality" as defined by the statute, there is no question but that such evidence was relevant and adequate and substantial under the above stated rule.

Of the various charges compiled, reproduced and distributed to the public at large by appellants six were found to be false statements of fact. All of the false statements in the charges reflected on the professional ability of the Superintendent. Those concerning his overbearing and arbitrary treatment of the named teachers were profesionally degrading to him. All of the false statements were an indirect reflection on the administration of the Seward school system as a whole. Admittedly none of the matters covered by the false statements were submitted as grievances in accordance with Board regulations, a point which will be discussed later. Instead, a time and date were arbitrarily selected for an "Open School Board meeting" in order to present to the "Board and the public" named grievances. It was announced that at "this time the Local shall demand immediate, guaranteed, substantial improvement in administrative policies", etc. The over-all, abiding effect of the widespread circulation of the false statements and the high-handed method employed to seek redress in disregard of established procedures, could only result in a loss of respect by the public for appellants and the teaching profession in general when all of the facts became known and was immoral conduct within the meaning of that term as it was then defined by statute.[23]

We are of the opinion that the superior court erred in concluding as a matter of law that circulation of the Open Letter was not immoral conduct within the meaning of the statute. The conclusions of the Seward School Board and the Board of Education, Appeals Committee on this point are therefore reinstated and affirmed.

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[23]See authorities cited notes 14-19 *supra* and accompanying text.

The Board's finding that appellant Watts had solicited teachers in the Seward schools to support a private move to oust the Superintendent was supported by the testimony of Benjamin Frampton, principal of the elementary school, that he was a member of the Seward District Teachers' Association with appellant Watts; that on the morning of April 25, 1959, between 8:30 and 9 o'clock in the morning, which was during school hours, Watts came to his room and asked to see him and his wife in his wife's first grade room; that after arriving there Watts stated that he had been sent as the representative of a group and wanted the Framptons to go along with a movement to oust the Superintendent and that Watts said that they were quite sure they could get the Superintendent. Frampton testified that he replied that he thought the Superintendent was doing all right and refused to acquiesce. Mrs. Margaret Frampton verified her husband's testimony and in addition testified that she was also a fellow member of the Seward District Teachers' Association (S.D.T.A.) with Watts; that Watts served on the Association's grievance committee to meet with the School Board; that in her opinion his attempt to oust the Superintendent was improper since there was a regulation which prescribed a method for doing this. Monty Richardson, a Seward teacher, testified that he was President of the S.D.T.A. and that he had appointed Watts to be a member of the public relations committee which was also known as the grievance committee; that he knew of no plan of the Association to oust the Superintendent; that in his capacity as a representative of the S.D.T.A. Watts did not represent it in advocating ouster. When asked if Watts in his individual capacity had solicited him to join in ousting the Superintendent, Richardson became a reluctant witness, but finally admitted that "there was certain overtones during the spring of 1959" by Mr. Watts. When asked if he would "consider those overtones to be within the scope of . . . Watts' responsibilities as a member of the grievance committee of the S.D.T.A.", Mr. Richardson replied, "No sir." Appellant Watts testified that the Framptons' testimony was false, but that he considered

them to be people of high character. E. G. Naegel, a Seward teacher, testified that appellant Watts stated to him in a classroom at the school that the Superintendent would probably not be in his job more than a month or so and "that if it was the last thing they would do, they would get . . . the Superintendent" and that Mr. Watts had stated to him during a recess period when they were supervising physical education classes that neither "Mr. Frampton nor Mr. Fabricius was either capable or competent of making a decision on the right to hire and fire the teachers and he felt that the community, that the public should make that decision."

With respect to Board finding 26, concerning appellant Blue's speech to the Longshoremen and Warehousemen's Union in Seward, Mr. John Sadusky, a member of I.L.W.U. Local 60, testified that Mr. Blue attended a meeting of his local in June or July of 1959 and addressed it concerning the Seward school system, the School Board and the Superintendent; that in his speech he stated in effect "that they couldn't get rid of the Superintendent so they had to go after the School Board" and that he believed that Mr. Blue left some petitions for recall of the School Board in the union hall. Appellant Blue denied recalling that he made such a statement.

We find that there was substantial evidence to support the findings with respect to the preceding charges and pass now to consider the question of whether the conclusions based upon the findings were legally justified.

We are of the opinion that appellant Watts' conduct in soliciting teachers Benjamin Frampton and Margaret Frampton, on school premises, during school hours, to join in a private movement to attempt to oust Superintendent Fabricius was immoral conduct within the statutory definition.[24]

[24]There was no direct testimony that Watts had solicited teacher Monty Richardson during school hours, or that he had actually solicited the cooperation of teacher E. G. Naegel, although his representations to Naegel were made during school hours and on school premises.

Such an objective was not recognized or sponsored by the S.D.T.A. according to the testimony of its president and Mrs. Frampton. The framework of the regulations provided an orderly, honorable, and democratic method of processing and proving the incompetency and unfitness of the Superintendent, which could have resulted in his removal from office if substantiated. Appellant Watts' efforts, made during school hours on school premises, were degrading, unprofessional and detrimental to morale and discipline and could only result in loss of respect by the public for him and his profession when all of the facts became known.

With respect to appellant Blue's speech before the I.L.W.U., the charge in the bill of particulars alleged that "false and misleading statements relating to the actions of the Seward School Board", were made in addition to the statement that, "we have been unable to get rid of the Superintendent, so we are going to get rid of the Board". While there is sufficient evidence in the record to support the finding that the latter statement was made, we find no evidence to support the charge that false and misleading statements were also made. The witness Sadusky did recall that a speech was made by Blue which "had to do with the School Superintendent and the School Board", but he could not recall any specific statements other than the one concerning removal of the Superintendent. The question which must be decided then, is whether the making of the statement, when considered in the light of the whole record,[25] that is, in relation to all of the recorded happenings in Seward during May and June of 1959 in which Blue participated, tended to bring him or his profession into public disgrace or disrespect.

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[25] AS 44.62.570, *Scope of Review,* states in part that:

(c) The court may exercise its independent judgment on the evidence. If it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by (1) the weight of the evidence, or (2) substantial evidence in the light of the whole record.

Appellant Blue had edited the original version of the Open Letter which, even after being revised, contained numerous statements degrading to the Superintendent and indirectly to the school administration which were found to be false. Without having made any official charge against Superintendent Fabricius which could have been processed in an orderly democratic manner and according to regulations, Blue was publicly, by innuendo, disparaging the head administrative official of the Seward school system in order to enlist support for the School Board recall petition. Blue's statement to the union members that "we" have been unable to get rid of the Superintendent would seem to infer that a majority of the teachers and/or their unions were being referred to. Actually, the movement was a private one, not supported by a majority of the newly formed Alaska Federation of Teachers. The statement was found to have been made to gain support for the School Board recall petition being circulated by appellants.[26] It implies that at least one attempt had been made to get rid of the Superintendent, which was prevented by the School Board and that the Board should therefore be recalled. The record however, contains no evidence of any previous attempt to get rid of the Superintendent. Exhibits 8, 9 and 10 of the Seward School Board hearing are signed statements made by three residents of Kenai and Soldotna, Alaska, stating that during May or June of 1959 appellant Blue had contacted and questioned them concerning Superintendent Fabricius character, administrative policies, and personal habits while a Superintendent in Kenai. The statements agreed that Blue was seeking information of a derogatory nature. When considered in relation with his other attempts to professionally discredit the Superintendent and indirectly the school administration, we believe the finding and conclusion with respect to the effect of Blue's speech to the Longshoremen's

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[26]See Blue v. Stockton, 355 P.2d 395 (Alaska 1960) where appellant Blue's contention that the Seward School Board was subject to recall was upheld.

Union are supported by substantial evidence. The constitutional aspect of this question will be considered later in this opinion.

Next to be considered is the allegation by appellees that the Board finding that appellants had failed to comply with Regulation E(7) of the Seward School Board was a sufficient independent cause for their nonretention.

In the notices of nonretention and bills of particular delivered to appellants, they were advised that they had not complied with the policies, regulations and procedures of the Seward School Board relating to the filing of complaints against the administration and the School Board and that this failure to comply had resulted in bringing the teaching profession into public disgrace and disrespect and therefore constituted "immorality" under the state. Essentially the same wording, less the allegation of immorality, was alleged as a separate and independent ground for nonretention.

With respect to the charge that appellants had failed to render substantial compliance with Board regulations, the Board found and concluded as follows:

> 3. Board Exhibit 12 is a true and correct copy of all the School Board regulations of the Seward Public Schools which were in effect during the school years 1958 through 1959 and 1959 through 1960. Said regulations were adopted by the Seward School Board and put into force at least prior to January 1, 1959, although, through an oversight, this was not reflected in the School Board minutes prior to that date.
>
> 4. A copy of the regulations described in Finding 3 was furnished to each teacher in the Seward Public Schools, including teachers Watts and Blue, at some time prior to January 1, 1959. Teachers Watts and Blue were familiar with these regulations, including Regulation E(7), which provides as follows:
>
> > 'Grievances, complaints and communications from employees shall be submitted to the Board through

the Superintendent. Any employee, or group of employees, may at any time appeal to the Board.'

5. On or about May 18, 1959, teachers Watts and Blue actively participated in the preparation of an 'Open Letter to the Seward School Board' and, further, actively participated in distributing copies of said letter to the members of the Seward School Board, to Superintendent George Fabricius, and to the public of Seward generally. Board Exhibit 7 is a copy of the 'Open Letter to the Seward School Board' so prepared and so distributed.

6. The Open Letter to the Seward School Board, described in the preceding finding, contained various charges by certain Seward School teachers, including teachers Watts and Blue, against Superintendent George Fabricius, which constituted grievances or complaints within the meaning of E(7) of the School Board Regulations.

7. None of the grievances or complaints enumerated in Board Exhibit 7 was presented to Superintendent George Fabricius prior to the distribution of the Open Letter to the Seward School Board on May 18, 1959.

8. Teachers Watts and Blue were bound to substantially comply with the School Board Regulations on and after May 18, 1959, the date of the distribution of the Board Exhibit 7 which was after the close of the school year but during a period when Watts and Blue were under contract to teach for the next school year.

9. The distribution of the Open Letter to the Seward School Board by teachers Watts and Blue was a violation of Regulation E(7) of the School Board Regulations.

10. Although the Open Letter to the Seward School Board was delivered to Superintendent George Fabricius at substantially the same time that it was delivered to members of the School Board, this procedure did not comply with the requirements of Rule E(7) of the School Board Regulations that grievances and complaints be submitted to the School Board through the Superintendent.

In its mandate remanding this matter to the Appeals Committee, the superior court requested specific findings and conclusions as to whether Regulations E(7) had ever been duly adopted by the Seward School Board and if so, the details of its violation by appellants.

With respect to the validity of Regulation E(7) the Appeals Committee, upon rehearing, accepted as an exhibit the affidavit of four members of the Seward School Board that ". . . the attached regulations of the Seward School Board were adopted and put into force prior to January 1, 1959. Through oversight this was not reflected in the School Board minutes prior to that date.". The attached regulations consisted of twelve pages of detailed rules and regulations, including Regulation E(7).

The Appeals Committee held that the affidavit was adequate proof that Regulation E(7) was adopted by the Board and put into effect prior to January 1, 1959. The Committee found that there was substantial evidence to support the Board's findings that appellants did distribute the Open Letter before submitting it to the Superintendent and affirmed the Board's conclusion that this constituted substantial noncompliance with Regulation E(7).

We have reviewed the testimony concerning the charge of violation of Regulation E(7). Superintendent Fabricius testified that Exhibit 12, which comprised the rules and regulations of the Seward School Board was drafted by him from various manuals of the public schools of Alaska and that the regulations thus compiled were individually considered by all members of the Board and approved paragraph by paragraph; that they were approved at different times and that he was present when approval was given to all of the regulations, including those relating to the filing of grievances. Mr. Benjamin Frampton, principal of the elementary school, identified Exhibit 12 as being a copy of the Board regulations; stated that he had a copy in his school in the Spring of 1959; that each teacher was supplied with a copy and was required to be familiar with it. Mrs. Mar-

garet Frampton, first grade teacher, corroborated her husband's testimony. Appellant Blue testified that he knew of the regulations in the Spring of 1959 and was familiar with Regulation E(7). Appellant Watts stipulated that he was familiar with Exhibit 12 and Regulation E(7) in particular and that as a member of the AFT he assisted in the distribution of the Open Letter along with appellant Blue. Watts tesfied that with the exception of item 3 in the Open Letter, he thought none of the matters mentioned in the letter had been processed as grievances through the Superintendent; that the Open Letter was the first effort of his group to reduce to writing the grievances which it had and that appellant Watts had delivered copies of the Open Letter to the members of the Seward School Board on the same day copies were mailed to the general public. The Open Letter itself stated that the matters contained in it had been withheld from the School Board at a meeting had with the Board ten days previously, in order to await the end of the school year. The teaching contracts of appellants which were in force during the times discussed herein, were introduced into evidence as proof of their agreement to abide by the regulations of the Seward School Board.

Both appellants admitted that they were familiar with Seward School Board Regulation E(7) during the times mentioned herein. The Board finding that it had been validly adopted prior to January 1, 1959 is supported by substantial evidence and is affirmed.

By its wording this regulation required that grievances, complaints and communications from employees should be submitted to the Board through the Superintendent. It provided a right of appeal from the Superintendent to the Board.

The evidence was substantial that, with the possible exception of item 3 of the Open Letter, none of the complaints or grievances contained therein had ever been communicated to the Superintendent. A statement on page 2 of the Open Letter is to the same general effect.

The conclusion that appellants had violated their teaching contract and Regulation E(7) in a substantial manner as an independent ground for their nonretention is affirmed.[27]

Next to be considered is legislation enacted by the Alaska Legislature subsequent to publication of our Opinion No. 251 on September 21, 1964.

First to be considered is the amendment to AS 14.20.090[28] enacted during the 1965 session mentioned earlier in this opinion. This amendment reduced the number of causes for which a teacher's certificate could be revoked from five to three. Immorality was retained as a cause with a definition of the term added, defining it as "the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude". This is the amendment referred to by the United States Supreme Court in Watts v. Seward School Board[29] when this case was remanded to us for reconsideration.

Appellant argues that this amendment is an indication of the intent of the legislature as to the meaning to be given to immorality as a cause for nonretention.

The weakness in this argument is that the statute stating the causes for revocation of a teacher's certificate has never been involved in this case. Appellants were nonretained under SLA 1957, chapter 71, section 2[30] for immorality and substantial noncompliance with school regulations. Under this statute immorality was defined as "conduct of the person tending to bring the individual concerned or the teach-

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[27]See Jepsen v. Board of Education of Community High School, 19 Ill. App. 2d 204, 153 N.E.2d 417 (1958).

[28]Quoted note 5 *supra*.

[29]381 U.S. 126, 14 L.Ed.2d 261, 262 (1965).

[30]Now AS 14.20.170(a)(2) and (3).

ing profession into public disgrace or disrespect". This is the statute and the definition of immorality which the Seward School Board and the Board of Education, Appeals Committee, were applying to the facts of appellants' case in 1960. No other definition of immorality was contained in the education laws. The fact that the legislature in 1965 amended the statute concerning revocation of teaching certificates by adding a new and different definition of immorality, while leaving in force the nonretention statute with its long standing definition of immorality, if anything, creates confusion rather than the enlightenment that appellant urges.

Additionally, House Bill 25 and Senate Bill 6 were introduced at the beginning of the 1965 session and passed by majorities in their respective houses of origin, but neither bill was enacted by the opposite body during that session. These bills proposed to amend the statute on nonretention by substituting for its definition of immorality, a definition defining it as the commission of an act involving moral turpitude. Since the filing of briefs and argument herein the Alaska Legislature enacted chapter 104 during its 1966 session. Chapter 104 was a committee substitute for Senate Bill 6, just mentioned. This amendment became effective on July 14, 1966. It repeals the original definition of immorality upon which this case was decided and defines immorality as the commission of a crime involving moral turpitude.[31]

The question now is whether this latter amendment can be given a controlling application to the facts of this case on reconsideration and if not, whether it is, nevertheless, useful in determining the original legislative intent as to the interpretation to be given to the term "immorality".

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[31] It should be noted that as a result of this amendment there is no longer a statutory clause for nonretention of a teacher for general misconduct not amounting to a crime involving moral turpitude.

The general rule on retrospective operation of statutes is embodied in AS 01.10.090 which states: "No statute is retrospective unless expressly declared therein." We have had occasion to apply this statute in *Stephens v. Rogers Constr. Co.*[32] Even before its enactment, the rule contained in the statute was established by case law, as noted in our opinion in *Hill v. Moe.*[33] The reason for the rule is perhaps best stated in *Shwab v. Doyle*[34] where the United States Supreme Court approved the following language from *Story*:[35]

> 'Retrospective laws are, indeed, generally unjust; and, as has been forcibly said, neither accord with sound legislation nor with the fundamental principles of the social compact.'

The Court then stated as follows:

> There is absolute prohibition against them when their purpose is punitive; they then being denominated ex post facto laws. It is the sense of the situation that that which impels prohibition in such case exacts clearness of declaration when burdens are imposed upon completed and remote transactions, or consequences given to them of which there could have been no foresight or contemplation when they were designed and consumated.[36]

Since SLA 1966, chapter 104, amending AS 14.20.170(2), contains no declaration that it is to be given retrospective effect, we are foreclosed from giving it a direct controlling effect on the facts.

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[32] 411 P.2d 205, 208 (Alaska 1966).

[33] 367 P.2d 739, 742 (Alaska 1961), *cert. denied* 370 U.S. 916, 8 L.Ed.2d 498 (1962).

[34] 258 U.S. 529, 66 L.Ed. 747 (1922).

[35] Story, Const. Sec. 1398.

[36] Shwab v. Doyle, 258 U.S. 529, 534, 66 L.Ed. 747, 752 (1922).

We have considered, but have been unable to adopt the view that the amendment under consideration is useful in determining the meaning which the legislature intended should be given to immorality when it first adopted this term as a designation of a cause for nonretention in 1957.

The term "immorality" first appeared in our education laws in 1929 when it was made a ground for revocation of a teacher's certificate.[37] It was not defined, but was included in the same statute with such grounds for revocation as: "violation of written contract", "intemperance", "crime against the laws of the Territory", and "unprofessional conduct". No statute stating the causes that might be invoked in support of the nonretention of a teacher was included in the original education laws and none was enacted until 1957 when SLA 1957, chapter 71, section 2 (now AS 14.20.170) first stated and defined the causes for nonretention.

The term "immorality" already had a history of use in the education laws of other states and had been construed

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[37]Section 70 of chapter 97, SLA 1929, which established the Territorial school system, stated:

> Certificates may be Revoked. The Commissioner of Education shall have the power to revoke for immorality, violation of written contract, intemperance, crime against the laws of the Territory, or unprofessional conduct, any certificate which may have been granted; Provided, that no certificate shall be revoked until the accused has been given an opportunity to be heard.

This statute became AS 14.20.090 when Alaska laws were recodified and remained unamended until 1965 when SLA 1965, chapter 41, was enacted. The amendment eliminates intemperance, crimes against the laws of the state not involving moral turpitude and unprofessional conduct as statutory causes for revocation of a teaching certificate. It should be noted that upon this redefinition of immorality there is no longer a "catch-all" statutory cause for revocation of a teaching certificate for misconduct which is not a violation of a law or a specific school regulation.

in the context of its usage to designate a cause for nonretention of a teacher by the highest courts of several states.[38] The broad definition first provided by our legislature, as conduct tending to bring the teacher or his profession into public disgrace or disrespect, is not inconsistent with the broad interpretation given to immorality by the courts of other states and is evidence that our legislature intended that it serve the purpose of a "catch-all" statute for all types of misconduct which would warrant refusing to renew a teacher's contract.[39] It seems likely that the coverage provided by the original definition was broad because it was intended to be broad, but it is not ambiguous.

On April 19, 1966, present counsel for appellants, who was a member of the Judiciary Committee of the Alaska House of Representatives during the 1965 and 1966 sessions and one of the sponsors of House Bill 25, forwarded to this court a copy of the House Journal for April 12, 1966, containing a House Judiciary Committee Report on Senate Bill 6, which was reported out of committee as House Committee Substitute for Senate Bill 6. The report refers to this court's first opinion in this case construing immorality and to the fact that it now has the case before it again, and states in part that, "this report will be helpful to . . . [the court] as an expression of legislative intent that the immorality necessary for nonretention of a teacher is his commission of an act which, under the laws of the state constitutes a crime involving moral turpitude."[40]

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[38]See authorites cited notes 14-19 *supra* and accompanying text.

[39]See notes 9-19 *supra* and accompanying text.

[40]The report in its entirety read:

REPORTS OF STANDING COMMITTEES

SB 6 The Judiciary Committee has had SENATE BILL NO. 6 (Teachers- conduct of) under consideration and the majority of the committees recommends that it be replaced with HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6, entitled:

"An Act relating to the cause for dismissal or non reten-

The objection to accepting the House Judiciary Committee's effort at construction of the original legislative intent is that it is diametrically opposed to what appears to be the expressed intent of the 1957 legislature when it first defined immorality. The House Journal for that session shows that the House had before it a specific motion which would have adopted as a definition of immorality as a cause for non-retention the following:

> (b) 'Immorality' means the commission of any act which involves moral turpitude and which, if committed by any citizen generally, would be punishable at law.

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tion of a teacher; and defining the term 'immorality' when used as a cause."

and that HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6 do pass.

The committee further requests that the following Judiciary Committee report accompanying SENATE BILL NO. 6 be spread in the journal:

"REPORT OF HOUSE JUDICIARY COMMITTEE
ON HOUSE COMMITTEE SUBSTITUTE
FOR SENATE BILL NO. 6

In *Watts and Blue v. Seward School Board*, Alaska Supreme Court No. 427, Sept. 1964, the court construed AS 14.20.170(2) which is amended by HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6. In that case the court held that two teachers, Mr. Watts and Mr. Blue could be discharged because their action in soliciting labor union and fellow teachers for support in removing the school superintendent and members of the school board from office was an immoral act under Alaska Law. The case was taken to the United States Supreme Court (Watts v. Seward School Board Per Curiam No. 923) which said: 'We need not consider petitioners' contentions at this time, for since their petition for certiorari was filed, Alaska has amended its statutes governing the dismissal of teachers.' The amendments referred to were chapters 14 and 41, SLA 1965. The state supreme court now has the case before it and HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6 and this report

Objection was voiced from the floor and the following amendment was offered and unanimously adopted:

> Strike sec. (b) and insert '(b) 'Immorality' means conduct tending to bring the individual concerned or the teaching profession into public disgrace.'[41]

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will be helpful to it as an expression of legislative intent that the immorality necessary for nonretention of a teacher is his commission of an act which, under the laws of the state constitutes a crime involving moral turpitude. While the substantive change of HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6 is already embodied in the recently passed HOUSE BILL No. 12 (Education Code), it is felt that enactment of HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6 will make manifest legislative intent as an aid to the court."

The report was signed by Mr. Guess, Chairman, and concurred in by Messrs. Taylor, Tillion, Stevens and Metcalf. Mr. Josephson abstained pursuant to the Uniform Rules of the Legislature.

SENATE BILL NO. 6 was referred to the Rules Committee for placement on the calendar.

[41] House Journal 1957, at 336 reads in pertinent part:

The House was called to order.

Mr. Metcalf offered the following amendment to C.S. HOUSE BILL NO. 33.

. . . .

Mr. Metcalf then offered the following amendment:

Page 2, Line 7: After the word 'be' delete everything down to and including semicolon on line 15 and substitute in lieu thereof the following:

'limited to and based on 'Incompetence' and 'Immorality', which are defined as follows:

(a) 'Incompetency' means the unintentional or intentional failure or omission to perform one's legitimate duties in a satisfactory manner with respect to one's present position.

(b) 'Immorality' means the commission of any act which involves moral turpitude and which, if committed by any citizen generally, would be punishable by law.

Subsequently the definition of immorality was again amended to add the words 'or disrespect'.[42]

Since the 1957 legislature was specifically moved to adopt the definition of immorality which would have restricted the term to crimes involving moral turpitude and rejected the motion and unanimously adopted the definition which has heretofore been applied in this case by the administrative bodies and the courts, we find no merit in appellants' argument on this point.[43]

Last to be considered under this subject is appellants' argument that enact of AS 14.20.095[44] by the 1965 legislature is a fact which should influence our reconsideration of this case.

Mr. Metcalf moved and asked unanimous consent that the amendment be adopted. Seconded by Mrs. Fischer. Mr. Coghill objected.

Mr. Buckalew then offered the following amendment to the amendment:

> Strike sec. (b) and insert '(b) 'Immorality' means conduct tending to bring the individual concerned or the teaching profession into public disgrace.'

Mr. Buckalew moved and asked unanimous consent that the amendment to the amendment be adopted. There being no objection the amendment to the amendment was ordered adopted.

[42]House Journal 1957, at 404.

[43]On the subject of construing legislative intent under these and similar circumstances see: Nichols v. School Dist. No. 3, 87 Mont. 181, 287 Pac. 624, 626 (1930); Rural Independent School Dist. v. New Independent School Dist., 120 Iowa 119, 94 N.W. 284, 286-87 (1903); 1 Sutherland, Statutory Construction § 1931 (3 ed. 1943). We have also considered Watts, Watts & Co. v. Unione Austriaca Di Navigazione, 248 U.S. 9, 21, 63 L.Ed. 100, 101 (1918) and Vandenbark v. Owens-Illinois Glass Co., 311 U.S. 538, 541-42, 85 L.Ed. 327, 329 (1941) and find the doctrine of those cases with respect to applying supervening changes in law to be inapplicable to this case.

[44]Quoted note 4 *supra*.

We have concluded that this statute can have no controlling effect on the facts of this case.

It cannot be given retrospective effect because there is no express declaration in the statute that it should have this effect.[45] In any event, it is directed at the rules or regulations that the commissioner of education, a local school board or local administrator might promulgate which would restrict or modify the right of a teacher to criticize public education officials outside school hours. In the case before us it is an act of the legislature itself that is being construed with relation to appellants' conduct. The new statute applies to activities conducted outside school hours, whereas much of the conduct condemned in this case occurred during school hours. The statute in no way condones the circulation to the public of false criticism of public education officials. In signing AS 14.20.095 into law the Governor commented:

> In brief, this bill does protect teachers who criticize others from being dismissed on the ground that they have violated a school regulation. But it does not protect a teacher from dismissal on the ground of 'immorality', as occurred in the Watts case. The bill might well mislead some into believing that no adverse results would follow from defamation of school or public officials. This would be a false and dangerous assumption.[46]

Last to be considered is the question of whether any of the Board's conclusions, affirmed herein, infringe on appellants' rights to freedom of speech under the First Amendment to the United States Constitution.

There is no constitutional question associated with the Board's conclusion that publication and circulation of the Open Letter to the general public was substantial noncom-

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[45] AS 01.10.090.

[46] Legislative Reporting Service, Report Number 12, p. 141 (1965).

pliance with Board Regulation E(7), which required that "grievances, complaints and communications" be submitted to the Board through the Superintendent.[47]

With respect to the other questions presented, appellants urge that we consider the applicability of *New York Times Co. v. Sullivan*,[48] *Garrison v. Louisiana*,[49] and *Dombrowski v. Pfister*,[50] since these decisions had not been published in time to have been briefed and considered prior to the issuance of our Opinion No. 251.

In *New York Times*, a public official was prosecuting a suit for libel for money damages against the newspaper because of criticism of his official conduct published in a paid advertisement containing false statements. In *Garrison* a district attorney was appealing a conviction of criminal defamation for criticism directed at state judges. The facts and purposes involved in the above cases are considerably different from those now before us. Here the appellants were not being prosecuted, civilly or criminally, by the public official against whom the false statements were directed. The Seward School Board was simply exercising its right under state law to refuse to renew appellants' teaching contracts for an additional year for conduct which it found brought public disgrace and disrespect upon appellants and the teaching profession generally. In placing *New York Times Co.* and *Garrison* in perspective, the Court said at 379 U.S. at 75, 13 L.Ed.2d at 133:

> Hence the knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection.

There is no question but that appellants had a constitutional right to compile, reproduce and distribute the Open

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[47] See text p.p. 28-34 *supra*.

[48] 376 U.S. 254, 11 L.ed.2d 686 (1964).

[49] 379 U.S. 64, 13 L.Ed.2d 125 (1964).

[50] 380 U.S. 479, 14 L.Ed.2d 22 (1965).

Letter, even though it did contain false statements concerning the Superintendent.[51] But this does not mean that they cannot be held appropriately accountable where their acts wrongfully damage their own and another's professional prestige, reflect detrimentally on the teaching profession as a whole and result in a loss of respect by the public for appellants and the local school system. The production and distribution of the Open Letter was a time consuming and

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[51] This concept of the constitutional right was judicially expressed in 1788 in Respublica v. Oswald, 1 Dall. 319, 1 L.Ed. 155, 159, 1 Am. Dec. 246, which was decided at the time the states were in the process of ratifying the constitution. The court said:

> The true liberty of the press is amply secured by permitting every man to publish his opinion; but it is due to the peace and dignity of society to inquire into the motives of such publications, and to distinguish between those which are meant for use and reformation . . . and those which are intended merely to delude and defame. To the latter description, it is impossible that any good government should afford protection and impunity.

In Commonwealth v. Blanding, 3 Pick. 304, 15 Am. Dec. 214, 218 (Mass. 1825) the court said, in interpreting this constitutional right:

> The liberty of the press was to be unrestrained, but he who used it was to be responsible in case of its abuse; like the right to keep firearms, which does not protect him who uses them for annoyance or destruction.

In Patterson v. Colorado, 205 U.S. 454, 462, 51 L.Ed. 879, 881 (1907), Justice Holmes cited the above cases as authority for stating:

> In the first place, the main purpose of such constitutional provisions is 'to prevent all such *previous restraints* upon publications as had been practised by other governments,' and they do not prevent the subsequent punishment of such as may be deemed contrary to the public welfare. (Citing cases.) The preliminary freedom extends as well to the false as to the true; the subsequent punishment may extend as well to the true as to the false.

See Near v. Minnesota, 263 U.S. 696, 75 L.Ed. 1357 (1930) where the Court cited with approval the above quoted portion of Patterson v. Colorado in holding that prior restraint against the press could not

deliberate act. The false statements contained in it were not made in heated debate. The factual basis for the charges could have been verified by appellants if they had taken the time to do so. Appellants admittedly ignore established democratic procedure for obtaining redress. Instead, they attempted to arouse and inflame the public against the Superintendent and the School Board on charges which were largely untrue. They chose to attempt to substitute the mass meeting for the orderly process of hearing and appeal. Under these facts we must hold that, considering the nature of their employment, appellants exceeded the limits of the exercise of their right of freedom of speech to the extent that they were not entitled to require the Seward School Board to renew their teaching contracts under the tenure law.

Appellant Watts had a constitutional right to freedom of discussion with other teachers, but he did not have a constitutional right to have his teaching contract renewed after soliciting teachers on school premises, during school hours, to support a private move to oust the Superintendent, where the effect of these acts was to bring down public disgrace and disrespect on him and his profession and to undermine the morale and discipline of the local school system.

Again, there is no doubt but that appellant Blue had the right to address the meeting of longshoremen and state that "we have been unable to get rid of the Superintendent, so we are going to get rid of the Board". And, when consi-

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be exercised, but that the publisher would be held liable for publications which abused the privilege. The Court in Near also noted the exception to the general rule which has been held to apply in times of war citing Schenck v. United States, 249 U.S. 47, 63 L.Ed. 470 (1919). (Actually, the constitutional right of freedom of speech seems to consist basically of the right to utter and print words. The ideas or thoughts expressed by those words are only considered in hindsight to determine whether or not the utterer abused his constitutional privilege.)

dered as an isolated act, separate and apart from the other events in which he took part in Seward during May and June of 1959, it would no doubt be said that no disgrace or disrespect could have resulted. However, when considered in the light of the entire record—that is, in relation to all of Blue's activities and all of the happenings during the times involved, the Board's conclusion can be sustained.[52] On the other hand, the constitutional question becomes a close one which should be resolved in appellants' favor in view of the fact that the record contains no evidence that false or misleading statements were made, in fact, contains no evidence of anything that was said at the meeting except the statement under consideration and that the speech was not made on school premises during school hours.

We have been unable to find any application of the rule of *Dombrowski v. Pfister*[53] to the facts of this case.

More in point is *Adler v. Board of Education*[54] where the Supreme Court of the United States held that a New York statute permitting the Board of Regents, after hearing, to announce the organizations which it found advocated overthrow of the government by force or violence, and to provide by regulation that membership of a teacher in such an organization was prima facie evidence of disqualification, did not violate the constitutional rights of freedom of speech. In discussing *Garner v. Los Angeles Bd. of Pub. Works*[55] where the Court held that a municipal employer was not prevented, because of being an agency of the state, from inquiring of its employees as to matters that may prove relevent to their fitness and suitability for public service, the Court in *Adler* said:

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[52] See discussion in text p.p. 18-19 *supra*.

[53] 380 U.S. 479, 14 L.Ed.2d 22 (1965).

[54] 342 U.S. 485, 96 L.Ed. 517 (1952).

[55] 341 U.S. 716, 95 L.Ed. 1317 (1951).

> A teacher works in a sensitive area in a school room. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, cannot be doubted.[56]

The Court went on to state at 342 U.S. at 493, 96 L.Ed. at 525 that a teacher who was disqualified from employment under the statute was not thereby denied the right of free speech and assembly—that his freedom of choice between membership in the organization and employment in the school system might be limited, but not his freedom of speech or assembly, except in the remote sense that limitation is inherent in every choice.

We find no merit in appellants' contention that AS 14.20.170(a)(2), defining immorality as conduct tending to bring disgrace or disrespect upon the teacher or his profession, was unconstitutional for vagueness.

Controlling on this point is *Beilan v. Board of Education*[57] where the Court stated:

> We find no requirement in the Federal Constitution that a teacher's classroom conduct be the sole basis for determining his fitness. Fitness for teaching depends on a broad range of factors. The Pennsylvania tenure provision specifies several disqualifying grounds, including immorality, intemperance, cruelty, mental derangement and persistent and willful violation of the school laws as well as 'incompetency.'

The Court's comments on and approval of the use in statutes of broad "catch-all" phrases to describe a teacher's conduct are quoted *supra* at page 8.

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[56] 342 U.S. at 493, 96 L.Ed. at 524.

[57] 357 U.S. 399, 406, 2 L.Ed.2d 1414, 1420 (1958).

In *Swan v. Board of Education*[58] the court held that the phrase "unprofessional conduct" was not void for vagueness. At 261 P.2d at 266 the court said:

> As was said in the Goldsmith case, 66 Cal. App. at page 168, 225 P. at page 787: '. . . the calling [of a teacher] is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous, that they are incapable of enumeration in any legislative enactment. . . . [the] teacher is instrusted with the custody of children and their high preparation for useful life. His habits, his speech, his good name, his cleanliness, the wisdom and propriety of his unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands are matters of major concern in a teacher's selection and retention. How can all of these things be provided for and *offenses against them be particularly specified in a single statute?* It was further said, 66 Cal. App. at page 172, 225 P. at page 789: 'No one has a natural or inherent right to teach a public school' and the Legislature 'for reasons of public policy' may 'make the right to teach in any particular school subject to a broad discretion in the school authorities to dismiss for causes which come within very general designations.' (Emphasis added.)

We have considered the views of our dissenting colleague.[59] It is our view that our colleague could only arrive at the conclusions recommended with respect to the conduct of appel-

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[58]41 Cal.2d 546, 261 P.2d 261 (1953), *cert. denied,* 347 U.S. 937, 98 L.Ed. 1087 (1954).

[59]It is established procedure in this court, where the interests of clarification and finality may be served, for the majority opinion to comment briefly on the views advanced by a dissenting opinion, which has already had the opportunity of commenting on the views of the majority.

lant Watts and the violation of Regulation E(7) by emphasizing portions of the testimony of individual witnesses, given on cross-examination, to the exclusion of the over-all testimony of numerous witnesses and reversing the findings and conclusions of the Seward School Board which had observed each witness individually and had made its findings on substantial evidence.

It is argued that the majority should not have reconsidered the trial court's order with respect to the circulation of the Open Letter. This view must be considered in the light of the fact that appellants specifically requested that the case be considered de novo and that appellee requested that the validity of Regulation E(7) and its violation be passed upon. In order to reconsider the case in its entirety the record was ordered supplemented by the transcript of all board proceedings. As our colleague points out in his opinion, (footnote 25) under the circumstances this court is free to consider any undetermined issues as well as to alter a previous determination of law "in regard to the proper construction and permissible reach of AS 14.20.170(a)(2)'s 'immorality' as a grounds for nonretention." We do not consider that the authorities cited by our colleague have been superceded.

Our colleague seems to be of the view that this court's original interpretation of "immorality" was incorrect because of the United States Supreme Court's mandate and the authorities cited.

The authorities cited in footnote 25 of the dissent represent instances where the United States Supreme Court disagreed with the construction of the state court and *reversed* and remanded the case for "'further proceedings not inconsistent" with that Court's views. Here, our interpretation of the meaning of immorality, pursuant to AS 14.20.170-(a)(2), was not reversed. The United States Supreme Court did not express any view of its own with respect to the meaning of that term. It vacated the judgment and remanded the case to this court for further consideration in view

of the fact that there had been changes in certain Alaska statutes since publication of our decision.

In this connection it should be mentioned that the Supreme Court's original per curiam opinion of May 3, 1965, stated that subsequently enacted legislation in Alaska had changed the definition of immorality *as grounds for dismissal* to "the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude". This, of course, was not the case. The legislation which was enacted was the provision defining "immorality" as a ground for *revocation of a teaching certificate* in AS 14.20.090, where no definition of "immorality" had previously been provided.[60]

When this discrepancy was drawn to its attention the United States Supreme Court issued its corrected per curiam opinion which accurately reflected the above fact. The point is that at the time the case was remanded the United States Supreme Court was obviously not aware of the fact that the statute which had been amended was one that was not directly involved in this case.

This court, therefore, is not under a mandate from the United States Supreme Court to revise its interpretation of "immorality" to conform to some view expressed by that Court because no view has been expressed. This court is only under a mandate to reconsider its interpretation in the light of subsequently enacted legislation in Alaska, which has been done.

We agree with all of the law and philosophy contained in the various quotes on freedom of speech cited in our colleague's opinion, but do not believe they are applicable to the facts before us.

It is therefore ordered:

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[60]This aspect of the case is discussed on p.p. 35-36 of this opinion.

(1) That the Seward School Board's conclusion that appellants were guilty of substantial noncompliance with Board Regulation E(7) is affirmed as a separate and independent cause for their nonretention.

(2) That the Seward School Board's original conclusion that appellants were guilty of immorality within the meaning of the statute as it then defined that term, for their part in compiling, reproducing and distributing the Open Letter containing false statements disparaging of the Superintendent is affirmed as a cause for their nonretention.

(3) That the Seward School Board's conclusion that appellant Watts was guilty of immorality, as it was then defined by statute, for his activities in soliciting teachers to join in a private move to oust the Superintendent is affirmed as a cause for his nonretention.

(4) That the Seward School Board's conclusion that appellant Blue's speech to the longshoremen's union constituted immorality, as it was then defined by statute, is set aside for not being supported by substantial evidence.

RABINOWITZ, Justice, dissenting in part, concurring in part.

I concur in the majority's conclusion that appellant Blue's talk to the Seward longshoremen was not immoral conduct. I dissent from the majority's determination that appellant Watts' solication of his fellow teachers, the Framptons, constituted immorality; from the decision that both appellants "were guilty of immorality . . . for their part in compiling, reproducing and distributing the Open Letter"; and I also dissent from the majority's holding that appellants "were guilty of substantial noncompliance with Board Regulation E(7)."

AS TO APPELLANTS' IMMORALITY IN THE COMPILATION, REPRODUCTION AND DISTRIBUTION OF THE MAY 18, 1959, OPEN LETTER

In the March 1960 bills of particulars accompanying the notices of nonretention which were sent by the Seward

School Board, appellants were in part charged with having engaged in "acts of immorality which have tended to bring . . . [appellants] and the teaching profession into public disgrace and disrespect." As to the May 18, 1959, Open Letter, it was particularized that appellants had

> assisted in the printing and distribution of false, distorted and misleading statements in a 'Bill of Particulars' against the Superintendent of the Seward Public Schools, with the intent of injurying the professional standing of the Superintendent and destroying community and pupil confidence in the administration of the schools. Such statements contained in this Bill of Particulars tended to destroy community confidence in the management of school affairs by the School Board. This 'Bill of Particulars' was circulated during 1959 in the community of Seward.[1]

When the matter was before the superior court in December 1961 on appellants' initial petition for review, Judge James M. Fitzgerald held in part that:

> [A]s a matter of law, the circulation by the petitioners of the Open Letter to the Seward School Board under date of May 18, 1959, is not immoral conduct within the meaning of the statute. I also conclude that, as a matter of law, the circulation of a petition seeking the recall of members of the Seward School Board is not immoral conduct within the meaning of the statute.[2]

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[1] The quote is from the bill of particulars which was sent to appellant Blue. The substance of the pertinent part of the bill of particulars which appellant Watts received is the same.

[2] In his oral opinion pertaining to this issue, Judge Fitzgerald said:

> This definition agrees generally with that adopted by the . . . [Supreme Court of Oklahoma] in Warkentin vs. Kleinwachter, 27 P 2d 160. That court found immoral conduct to be that conduct which is willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community. Judged in the light

The case was then remanded to the Appeals Committee of the State Board of Education for additional findings of fact and conclusions of law. After this was accomplished, appellants again sought review in the superior court and in September 1963, Judge Hubert A. Gilbert denied appellants' second petition for review. Appellants then appealed to this court from the denial of their second petition for review.

It is of particular significance that appellees failed to cross-appeal from Judge Fitzgerald's holding that as a matter of law appellants' actions in regard to the Open Letter and recall petition did not constitute immoral conduct. None of the briefs which were initially presented to this court made any reference to these rulings in regard to the Open Letter and recall petition.[3]

After the United States Supreme Court vacated the Judgment which had been entered in *Watts v. Seward School Bd.*[4] and had remanded the case,[5] this court requested further briefs. In none of the additional briefs, which were thereafter filed, was issue made of Judge Fitzgerald's 1961

> of these standards, the circulation of the open letter to the Seward School Board, under date of May 18, 1959, is not immoral conduct; nor is circulating a petition seeking the recall of members of a school board immoral conduct within the meaning of the statute. This is not to say that the conduct of the petitioners may not be cause for non-retention under other provisions of the statute.

Note that the bills of particulars which accompanied the notices of nonretention also specified that appellants were guilty of immoral acts because while teachers

> in the Seward Public Schools, [they] carried to the people of the community and personally signed a petition seeking a recall of the Seward School Board on charges that could not be substantiated and which were false.

[3]See the brief filed with this court prior to our initial decision in Watts v. Seward School Bd., 395 P.2d 372 (Alaska 1964).

[4]*Ibid.*

[5]Watts v. Seward School Bd., 381 U.S. 126, 14 L.Ed.2d 261 (1965).

ruling that appellants were not guilty of immoral conduct resulting from any part they played in authoring, reproducing, and circulating the Open Letter of May 28, 1959.[6]

Thus, without any attempt to distinguish this court's prior precedents, and without the benefit of an adversary presentation (i.e., statement of points, specification of errors, and arguments in appellate briefs), the majority has unilaterally decided to reverse Judge Fitzgerald's holding as to the Open Letter. It is interesting that the majority isolates the Open Letter for this singular appellate treatment without attempting any reference to the superior court's decision in regard to the petition for recall.

In *Theodore v. Zurich Gen. Acc. & Liab. Ins. Co.*,[7] this court said:

> If Zurich had felt that that decision was erroneous, it might have taken a cross-appeal to this court. But it failed to do so, and it thus waived its objection that service of process was improper or insufficient.[8]

Four years later in *Alaska Brick Co. v. McCoy*,[9] the *Zurich* rule was again adhered to. At page 457, this court stated:

> Appellee did not take a cross appeal. Nor did he even file a cross statement of points in appellant's appeal, which at least would have alerted appellant to the existence of the issue as to attorney's fees so

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[6]Similarly no issue is made of Judge Fitzgerald's holding that appellants' circularization and adherence to the petition for recall of the Seward School Board was not immoral conduct as a matter of law.

[7]364 P.2d 51, 57 (Alaska 1961).

[8]In support of this holding this court cited Western Life Indem. Co. v. Rupp, 235 U.S. 261, 271, 59 L. Ed. 220, 224 (1914); Alaska Industrial Bd. v. Chugach Elec. Ass'n, 356 U.S. 320, 324-25, 2 L.Ed.2d 785, 798 (1950).

[9]400 P.2d 454, 457 (Alaska 1965).

> that additional portions of the record might have been designated if appropriate. Orderly procedure will not permit an appellee to attack a judgment for the first time in his brief in the appellant's appeal. We shall not pass upon the matter as to the attorney's fees allowed by the trial court.

See also the following authorities which have reached similar conclusions as to the necessity of perfecting cross-appeals. *Arkansas Fuel Oil Co. v. Leisk*, 133 F.2d 79 (5th Cir. 1943); *Cochran v. M & M Transp. Co.*, 110 F.2d 519 (1st Cir. 1940); *United States v. Bentley*, 107 F.2d 382 (2d Cir. 1939); *Smith v. Boise City*, 104 F.2d 933 (9th Cir. 1939).

In determing to reverse the superior court on this point, the majority not only has disregarded the holdings of *Zurich* and *Alaska Brick* but by virtue of its reversal has assigned to limbo a vast body of this court's prior literature, including that portion of this court's original opinion in *Watts v. Seward School Bd.*[10] where it was said:

> The appellants voiced a broad and general claim in their brief on appeal that their constitutional rights to assemble and speak freely have been abridged in this case and that they have been deprived of their personal liberties and property rights without due process of law. They treat the subject in a very cursory fashion and cite us to no case law in support of their claim. Under these circumstances we need not consider the point.[11]

In addition to *Watts*, the decisions of this court are relatively legion in which issues were not resolved because of the parties' failure to raise proper objections in the trial court, or because of improper statements of points on appeal, or because of improper specifications of error, or due

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[10] 395 P.2d 372, 376 (Alaska 1964).

[11] *Accord*, Sanuita v. Common Laborer's & Hod Carriers Union, 402 P.2d 199, 203 (Alaska 1965).

to the lack of adequate treatment of specific issues in their appellate briefs. See: *Sanuita v. Common Laborer's & Hod Carriers Union*, 402 P.2d 199 (Alaska 1965); *Meyst v. East Fifth Ave. Serv.*, 401 P.2d 430 (Alaska 1965); *Alaska Brick Co. v. McCoy*, 400 P.2d 454 (Alaska 1965); *Alaska State Housing Authority v. Vincent*, 396 P.2d 531 (Alaska 1964); *Merl F. Thomas Sons, Inc. v. State*, 396 P.2d 76 (Alaska 1964); *Williams v. DeLay*, 395 P.2d 839 (Alaska 1964); *Apex Concrete Co. v. Bray*, 395 P.2d 514 (Alaska 1964). *Buza v. Columbia Lumber Co.*, 395 P.2d 511 (Alaska 1964); *Saxton v. Harris*, 395 P.2d 71 (Alaska 1964); *Orbeck v. Wheeler Constr. Co.*, 394 P.2d 781 (Alaska 1964); *Higgins v. Lantz*, 394 P.2d 776 (Alaska 1964); *Preferred Gen. Agency, Inc. v. Raffetto*, 391 P.2d 951 (Alaska 1964); *Thompson v. Wheeler Constr. Co.*, 385 P.2d 111 (Alaska 1963); *Freightways Terminal Co. v. Industrial & Commercial Constr., Inc.*, 381 P.2d 977 (Alaska 1963); *Gregory v. Padilla*, 379 P.2d 951 (Alaska 1963); *Pollastrine v. Severance*, 375 P.2d 528 (Alaska 1962); *Parks v. Brown*, 368 P.2d 220 (Alaska 1962); *Veal v. Newlin*, 367 P.2d 155 (Alaska 1961); *Bidwell v. Scheele*, 355 P.2d 584 (Alaska 1960).

On the basis of the holdings in *Theodore v. Zurich Gen. Acc. & Liab. Ins. Co.*[12] and *Alaska Brick Co. v. McCoy*[13] and the above sampling of authorities, and in light of the fact that appellees never cross-appealed from the superior court's holding that appellants' part in writing, reproducing and distributing the Open Letter was not immoral conduct, I am of the opinion that this issue is not properly before us and that Judge Fitzgerald's decision on this point should therefore remain undisturbed. In my view it was inappropriate for the majority to have decided an issue of such importance without the benefit of an adversary presentation.

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[12] 364 P.2d 51 (Alaska 1961).

[13] 400 P.2d 454 (Alaska 1965).

and in circumstances which have denied appellants any opportunity to argue this question.[14]

AS TO APPELLANT WATTS' IMMORALITY ARISING FROM "HIS ACTIVITIES IN SOLICITING TEACHERS TO JOIN IN A PRIVATE MOVE TO OUST THE SUPERINTENDENT"

The majority has concluded that appellant Watts' conduct in soliciting the Framptons is within AS 14.20.170(a)(2)'s definition of immorality as a cause for nonretention. I think it appropriate to again point out that this statute, before amendment, had defined immorality as

> conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect . . . .

At the second hearing before the Seward School Board, Benjamin Frampton testified that on April 28, 1959, he

> went with Mr. Watts down to Mrs. Frampton's room and there he stated that he had been sent as a representative of the group . . . he had been a friend of ours for a long time. He wanted to know if we would go along with the movement to oust Mr. Fabricius. He stated that he knew the certification of teachers is not the real issue. He said he knew I was in the middle and didn't want me to get hurt. He said that they were quite sure they could get Mr. Fabricius and wanted to know if we would go along with them. We told him at that time that we could see no reason why anyone should try to get Mr. Fabricius and we considered he was doing all right and would have take [sic] the stand of Mr. Fabricius and the school board. Then we asked Mr. Watts what group was going along with him. Then he said under

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[14] Further reference will be made to the May 18, 1959, Open Letter in conjunction with discussion of other issues.

> the circumstances he would rather not say. I believe that was the conversation.[15]

The foregoing is the sum total of Watts' immoral conduct in regard to the Frampton solicitation. The record further establishes that the only persons present during this entire conversation were Mr. and Mrs. Frampton and appellant Watts. It is undisputed that this conversation took place in Mrs. Frampton's classroom. As to the time of the conversation Mr. Frampton testified that:

> It was April 28, 1959 before school, that morning.
>
> . . . .
>
> I can't say definitely, I imagine it was somewhere between 8:30 and 9:00 however.

Mr. Frampton was then asked whether in his "experience as a teacher and a principal in the Seward public school system," the period between 8:30 and 9:00 was "during school hours for a teacher." The witness then testified "According to our regulations it would have been," Subsequently, on cross-examination, Mr. Frampton testified that the conversation with appellant Watts took place before school that morning, and also testified "It's possible I couldn't say" that the conversation with Watts took place prior to 8:30 a.m.[16] In any event, the Seward School Board made no finding as to the time this conversation took place. Yet on the state of this, at best, equivocal record the majority apparently lays great stress on the fact that this conversation took place "during school hours." More particularly, the majority concluded that Watts' conduct in soliciting the Framptons

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[15]Mrs. Frampton's version of this conversation was the same with the exception that she testified that she said she would not join and "I asked, what has Mr. Fabricius done to deserve such a thing as this? He didn't come up with an answer."

[16]Watts flatly denied Framptons' version of the April 28, 1959, conversation. He also testified that the talking question took place before school had started.

on school premises, during school hours, to join in a private movement to attempt to oust Superintendent Fabricius was immoral conduct within the statutory definition.

Assuming the Framptons' version of the April 28, 1959, conversation is accurate, I fail to ascertain how this conversation among three teachers (before any school children were present) can be characterized as conduct which tended to bring the individual concerned or the teaching profession into *public* disgrace or disrespect. Taking the majority's definition of immorality as the applicable standard, I am of the opinion that Watts' contribution to the questioned conversation was not immoral conduct as a matter of law.

Precisely what concrete meaning is to be given to the statutory definition of immorality set forth in AS 14.20.170(a)(2) is never made clear by the majority. The authorities relied upon by the majority all define immorality in terms of conduct which is offensive to the community's morals or inconsistent with moral rectitude.[17] *Appeal of Schneider*,[18] also relied upon by the majority, stated that the synonyms of "immorality" are "corrupt", "indecent", "depraved", and "dissolute." Yet, after discussing these authorities, the majority concludes that "For the purposes of this case we must accept . . . the legislative definition provided." The opinion does indicate that the standard for determining immorality is "one of degree depending upon the rules of society and to some extent upon the mores of the particular community."

The majority's conclusion that Watts' conversation with the Framptons was tantamount to immoral conduct is apparently based on three gounds. First, it was reasoned that

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[17] Appeal of Batrus, 148 Pa. Super. 587, 26 A.2d 121 (1942); Negrich v. Dade County Bd. of Pub. Instruction, 143 So.2d 498 (Fla. App. 1962).

[18] 12 N.J. Super. 449, 79 A.2d 865 (App. Div. 1951).

the objective (ouster of the superintendent) was not recognized by the Seward District Teachers Association. As to this ground, we are not informed if this same conversation would be held moral if the Teachers' Association had as one of its objectives the removal of the superintendent. Secondly, the majority reasons that since "orderly", "honorable", and "democratic" regulations were available for removal of the superintendent, Watts' conversation with the Framptons was therefore immoral. I take this statement to mean that any violation of a school board regulation is equatable to immoral conduct. Thirdly, "when all of the facts became known" (note it is not stated what method of revelation is relevant or the pertinent scope of such revelation) Watts' conversation "during school hours on school premises, were degrading, unprofessional, and detrimental to morale and discipline and could only result in loss of respect by the public for him and his profession." As to this conclusion, the majority does not disclose which rules of society, or mores of a given community, compelled such characterizations. Similarly the reader is not informed if any one of these three categories in and of itself is sufficient to metamorphize Watts' conversation into immoral speech.

As pointed out earlier, what occured was a conversation among three adults, in the absence of any school children. After Watts made known his purpose, the Framptons unequivocally rejected Watts' request to join the movement and then and there articulated their support of the superintendent. To characterize Watts' conduct "corrupt", "indecent", "depraved", or "dissolute" is simply not borne out by the record. For the majority to conclude that Watts' conversation was "degrading", "unprofessional", "detrimental to morale and discipline" and resulted in loss of respect by the public is equally devoid of any substantiation in the record and appears to be the product of considerable speculation.

In short, assuming the truth of all the facts relied upon by the majority, and taking as the applicable standard their

adoption of the literal statutory definition of immorality, I am of the opinion that appellant's conversation with the Framptons did not tend to bring him or his profession into public disgrace or disrespect. Here all that was involved was speech directed toward requesting help in bringing about a change in school administration.

AS TO THE HOLDING THAT APPELLANTS' FAILURE TO COMPLY WITH REGULATION E-7 OF THE SEWARD SCHOOL BOARD "WAS A SUFFICIENT INDEPENDENT CAUSE FOR THEIR NONRETENTION"

I cannot agree with the conclusion that appellants' circulation of the Open Letter amounted to "substantial noncompliance" with the Board's regulations.[19]

Regulation E-7 of section I of the Seward School Board provides:

> Grievances, complaints and communications from employees shall be submitted to the Board through the Superintendent. Any employee or group of employees may at any time appeal to the Board.

Regulation E-9 of the Board's regulations reads:

> Employees or groups of employees desiring to address the Board shall address their communication to the Superintendent and not to individual members of the Board, except that copies of any communication may be sent to all Board members.

Also pertinent is the finding of the Seward School Board that "the Open Letter to the Seward School Board was delivered to Superintendent George Fabricius at substantially the same time it was delivered to members of the School Board."

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[19] AS 14.20.170(a)(3) provides that a cause for nonretention of a teacher is

> substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent.

The record demonstrates that Superintendent Fabricius (the author of the regulations in question) had considerable difficulty explaining the instances where either regulation E-7 or regulation E-9 was applicable. He encountered similar problems in defining the relationship between these two regulations. At one point in his testimony, Superintendent Fabricius was asked:

> Mr. Walton: Let's take the other regulations - assuming this is a regulation of the Board. Subparagraph 7 - that states that grievances, complaints, and communications shall be submitted to the Board through the Superintendent. Do I understand you to state that in your opinion, as the one who drafted this regulation, that paragraph is qualified by Paragraph 9, which says it's OK to do it to the Board simultaneously.
>
> Mr. Fabricius: Well, if you back to the other paragraph, it states there, it's stated in there - my interpretation of it would be that it should be to the Superintendent, but it doesn't prevent you from at the same time sending it to the Board.[20]

A comparison of the text of Regulation E-7 with Regulation E-9 illuminates the uncertainties and ambiguities inherent in the Board's regulations regarding the proper procedure to be followed by its employees in addressing grievances, complaints, and communications to the Board. On this basis alone I would reverse the Board's finding that appellants were guilty of substantial noncompliance with Regulation E-7. The applicability of, and relationship between, the two regulations is at best uncertain. I find it unreasonable to conclude that appellants had failed to substantially comply with Regulation E-7 when the evidence shows that they had complied with the provisions of Regulation E-9;

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[20]Later Mr. Fabricius also testified "The Board might interpret that different than I do. They are the ones to decide."

that the regulations themselves were ambiguous, and that contemporaneous interpretation of these two regulations by the Superintendent and the Seward School Board was to the effect that substantially simultaneous notification to the Board and the superintendent was sufficient compliance with with Regulation E-7.[21]

Two other factors also lead me to differ with the majority's holding in regard to Regulation E-7. First, there is nothing in the text of Regulation E-7 which prohibits an employee from making a public disclosure of any grievance, complaint, or communication which he has submitted to the Board, and as is pointed out subsequently, education, and in particular administration of our schools, is a public issue as to which freedom of discussion is essential to the formation of public opinion. Secondly, in the crucial period during the weeks prior to the circulation of the Open Letter, the Seward School Board and the Superintendent had met with committees of the Seward District Teachers' Association in regard to grievances pertaining to the non-retention of certain teachers. At no time during this period did either the Seward School Board or the Superinten-

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[21] At one point when questioned about a meeting which took place a few weeks prior to the sending of the Open Letter, the following transpired:

Mr. Walton: Sir, do you believe that the Executive committee, of the SDTA, or the members representing it, violated the same regulations when it first approached the Board with respect to non-retention of these four teachers?

Mr. Fabricius: Well I believe they - I recall testimony which shows that they sent me a letter at the same time.

Mr. Walton: Is that what E7 provides for?

Mr. Fabricius: Well, That would be one way of providing for it.

Mr. Walton: Doesn't it say that all grievances shall be submitted to the Board through the Superintendent?

Mr. Fabricius: I believe if you go further along you will see that they may at the same time be sent to members of the Board.

dent require compliance with Regulation E-7 as a procedural prerequisite to the Board's receiving and hearing grievances, complaints, or communications from individuals.

In such circumstances I believe it to be basically unjust to hold appellants to the letter of Regulation E-7 which is ambiguous when read in conjunction with Regulation E-9 and one that had been, in practice, consistently disregarded by the Board during the period of time immediately preceding appellants' circulation of the Open Letter.

AS TO LEGISLATION ENACTED BY THE ALASKA LEGISLATURE SUBSEQUENT TO THE PUBLICATION OF THIS COURT'S OPINION IN WATTS v. SEWARD SCHOOL BOARD

In petitioning the United States Supreme Court for certiorari, appellants asserted that their dismissals for allegedly immoral conduct unconstitutionally infringed upon "their rights to political expression guaranteed by the First and Fourteenth Amendments of the United States Constitution." After observing that subsequent to the time appellants had filed their petition for certiorari, the Alaska legislature had passed SLA 1965, chapters 14 and 41, which acts redefined "immorality" as a ground for the revocation of a teacher's certificate and added a new section pertaining to the right of teachers to engage in comment and criticism as to school matters outside of school hours, the Supreme Court of the United States stated:[22]

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[22] AS 14.20.090(a) (SLA 1965, ch. 41, § 2) defined immorality for purposes of revocation

> as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude.

AS 14.70.095 (SLA 1965, ch. 14) added a new section to our education laws. This act provides:

> *Right to Comment and Criticize Not to be Restricted.* No rule or regulation of the commissioner of education, a local school board, or local school administrator may restrict or modify the right of a teacher to engage in comment and cri-

> We need not consider petitioners' contentions at this time . . . .
>
> . . . .
>
> This Court has held that supervening changes in state law that may be relevant to the disposition of a case may require that the cause be remanded for appropriate action by the state court. See, e.g., Missouri ex rel. Wabash R.Co. v. Public Service Comm'n, 273 US 126, 131, 71 L ed 575, 577, 47 S Ct 311. Cf. Trunkline Gas Co. v. Hardin County, 374 US 8, 11 L ed 2d 38, 84 S Ct 49. Accordingly, it is appropriate to allow the Alaska Court to consider the effect of the new Alaska statutes upon this case.[23]

The Supreme Court of the United States' mandate remanded the case to this court

> in order that such proceedings may be had in the said cause, in conformity with the judgment of this Court above stated, as accord with right and justice, and the Constitution and laws of the United States.

Under this mandate this court was required to "consider the effect of the new Alaska statutes upon this case."[24] But this is not the full limit of our authority under this remand.[25] This court is free to consider, if necessary, any

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> ticism outside school hours, relative to school administrators, members of the governing body of any school or school district, any other public official, or any school employee, to the same extent that any private individual may exercise the right.

[23] Watts v. Seward School Bd., 381 U.S. 126, 127, 14 L.Ed.2d 261, 262 (1965).

[24] As has been pointed out, while the case was pending before this court on remand, the Alaska legislature amended AS 14.20.170(a)'s definition of immorality (SLA 1966, ch. 104). Immorality for purposes of nonretention is now defined as

> the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude.

[25] *Re* Sanford Fork & Tool Co., 160 U.S. 247, 255, 40 L. Ed. 414, 416 (1895). Writing for the Supreme Court, Mr. Justice Gray stated:

undetermined issues (such as the regulations issue) as well as to alter its previous determination of law in regard to the proper construction and permissible reach of AS 14.20.170(a)(2)'s "immorality" as a grounds for nonretention.[26]

It is well established that appellate courts, in the exercise of their jurisdiction, are empowered

> not only to correct error in the judgment entered below, but to make such disposition of the case as justice may at this time require . . . . And in determining what justice now requires, the court must consider the changes in fact and in law which have supervened since the decree was entered below.[27]

> When a case has been once decided by this court on appeal and remanded to the circuit court, whatever was before this court, and disposed of by its decree, is considered as finally settled. The circuit court is bound by the decree as the law of the case; and must carry it into execution, according to the mandate.

[26]See Hart & Wechsler, The Federal Courts and The Federal System, 420 (1953); Schuylkill Trust Co. v. Pennsylvania, 302 U.S. 506, 512, 82 L. Ed. 392, 396 (1938); Georgia Ry. & Elec. Co. v. City of Decatur, 297 U.S. 620, 623, 80 L. Ed. 925, 927 (1936); Western States Mach. Co. v. S.S. Hepworth Co., 152 F.2d 79, 81 (2d Cir.), *cert. denied*, 325 U.S. 873, 89 L. Ed. 1991 (1945).

In Hart & Wechsler, *ibid.*, the authors state:

> When the Supreme Court reverses the judgment of a state court, it normally remands the cause for proceedings 'not inconsistent' with the Court's opinion. This mandate leaves the state court free to pass on any other undetermined questions, or even to alter its determination of underlying state law.

[27]Watts, Watts & Co. v. Unione Austriaca, 248 U.S. 9, 21 63 L. Ed. 100, 101 (1918). See also Vandenbark v. Owens-Illinois Glass Co., 311 U.S. 538, 541-42, 85 L. Ed. 327, 329 (1941); Carpenter v. Wabash Ry., 309 U.S. 23, 27, 84 L. Ed. 558, 561 (1940); Patterson v. Alabama, 294 U.S. 600, 607, 79 L. Ed. 1082, 1086 (1935); Gulf, C & S. F. Ry. v. Dennis, 224 U.S. 503, 507, 56 L. Ed. 860, 862 (1912); Dinsmore v. Southern Express Co., 183 U.S. 115, 46 L. Ed. 111, 113 (1901); Brownell v. Kaufman, 251 F.2d 374, 375 (D.C. Cir. 1957);

Also pertinent to resolution of the issues before us is the related doctrine of law of the case. In regard to this doctrine, the court in *White v. Higgins*[28] stated:

> The doctrine of 'law of the case' is not an inexorable command. It 'merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their powers.' Messenger v. Anderson, 225 U.S. 436, 444, 32 S.Ct. 739, 740, 56 L.Ed. 1152 . . . . Though the power exists to reopen the points of law already decided, it is a power which will necessarily be exercised sparingly, and only in a clear instance of previous error, to prevent a manifest injustice. The doctrine of law of the case is normally a salutary one in the interest of economy of efforts and of narrowing down the issues in successive stages of litigation. In the absence of exceptional circumstances, it would be unfortunate if on second appeal counsel felt free to argue de novo as a matter of course the points decided on previous appeal. See Great Western Telegraph Co. v. Burnham, 162 U.S. 339, 343, 344, 16 S.Ct. 850, 40 L. Ed. 991.[29]

NLRB v. Continental Baking Co., 221 F.2d 427, 432 (8th Cir. 1955); NLRB v. National Gas Co., 215 F.2d 160, 162-63 (8th Cir. 1954); Washington v. United States, 214 F.2d 33, 46-47 (9th Cir.), *cert. denied*, 348 U.S. 862, 99 L. Ed. 679-80 (1954); Zank v. Landon, 205 F.2d 615, 616 (9th Cir. 1953); McMahan v. Hunter, 179 F.2d 661, 663 (10th Cir.), *cert. denied*, 339 U.S. 968, 94 L. Ed. 1376 (1950); Schaff v. R. W. Claxton, Inc., 144 F.2d 532, 533 (D.C. Cir. 1944).

In Patterson v. Alabama, *ibid.*, Mr. Chief Justice Hughes said:

> [W]e have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.

This statement was adopted in its entirety in the Schaff case by Associate Justice Edgerton.

[28] 116 F.2d 312, 317 (1st Cir. 1940).

[29] See Kaku, Nagano v. Brownell, 212 F.2d 262, 263 (7th Cir. 1954);

In light of these principles and the supervening changes which have occurred in our education laws as a result of the enactment of SLA 1965, chapters 14 and 41 and SLA 1966, chapter 104, I am convinced that this court's initial construction of "immorality" was not in accord with the legislature's intent nor with the public policy of this state. To permit AS 14.20.170(a)(2)'s definition of immorality to reach these acts of appellants which the majority by their affirmance have labeled immoral, in my view raises issues as to the constitutionality of such a sweeping application of the statute. We previously held that it is our duty to reasonably construe statutes to avoid a danger of unconstitutionality.[30] I think this precept particulary appropriate here.

AS 14.20.170(a)(2)'s definition of "immorality" as conduct "tending to bring the individual concerned or the teaching profession into public disgrace or disrespect" is at best of doubtful significance and, potentially, of unlimited applicability. The Alaska legislature's subsequent enactment of SLA 1965, chapter 41, and SLA 1966, chapter 104, has limited, in regard to the causes for revocation and nonretention, "immorality" to the commission of crimes involving moral turpitude. Our legislature, by virtue of its passage

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where the court, in reference to the law of the case rule, stated:

> In other words, though the rule that what is said on appeal becomes the law of the case is not an iron-clad rule which denies power in the court to correct its manifest error, it is one of sound policy.

To the same effect, see General Am. Life Ins. Co. v. Anderson, 156 F.2d 615, 619 (6th Cir. 1946); Commissioner v. Nechter, 143 F.2d 486 (7th Cir.), *cert. denied*, 323 U.S. 759, 89 L. Ed. 607 (1944); Brown v. Gesellschaft Fur Drahtlose Tel., 104 F.2d 227, 228 (D.C. Cir. 1939); *In re* Hallbom's Estate, 189 Minn. 383, 249 N.W. 417, 418 (1933), *aff'd sub nom.* Pagel v. Pagel, 291 U.S. 473, 78 L. Ed. 921 (1934).

[30] Hoffman v. State, 404 P.2d 644, 646 (Alaska 1965); Territory of Alaska v. Craig Enterprises, Inc., 355 P.2d 397, 403 (Alaska 1960).

of SLA 1965, chapter 14, has also given statutory recognition to the policy of permitting teachers (outside of school hours) to comment on, and to criticize, school administrators, school boards, and any other public officer.

For the very first time in this case we now have the benefit of an unambiguous manifestation from the legislature concerning its intended delimitation of "immorality." Also by virtue of the legislature's enactment of SLA 1965, chapter 14, we have a clear statutory expression of public policy prohibiting restrictions upon the right of teachers to comment and criticize school administrators, school boards, or any other public official.

Under the Supreme Court of the United States' mandate, and the authorities heretofore cited, I would hold that this court's original construction of immorality in AS 14.20.170(a)(2) was incorrect in light of the relevant legislation which has been enacted since this court's original decision in the case at bar was rendered.

Such an analysis and conclusion is not, in my opinion, violative of AS 01.10.090's mandate that "No statute is retrospective unless expressly declared therein." It is not unreasonable to assume that the Supreme Court of the United States was aware of the "general rule on retrospective operation of statutes embodied in AS 01.10.090" when it remanded the case. Here the three statutory changes were enacted subsequently to, and in relation to, a specific controversy concerning the construction of the term "immorality" as a cause for nonretention. In such circumstances I am of the view that the three statutes can properly be looked to as legislative interpretations of the original AS 14.20.170(a)(2).[31] I do not think that the fact the 1957

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[31] See 1 Sutherland, Statutory Construction § 1931 (3d ed. 1943); School Dist. No. 18 v. Pondera County, 89 Mont. 342, 297 Pac. 498 (1931); Hintz v. Zion Evangelical United Brethern Church, 13 Wis. 2d 439, 109 N.W.2d 61 (1961); Kennedy v. Truss, 13 A.2d 431, 40 Del. 424 (Super. Ct. 1940).

legislature rejected the "crime of moral turpitude" definition in favor of the "tending to bring into public disgrace or disrespect" definition precludes the result I reach. The fact of this rejection does not mean that the legislature envisioned that the "tending to bring" definition of immorality would be applied to speech as it was in the case at bar. This last comment leads to the final point I wish to discuss, namely, that of free speech.

AS TO FREEDOM OF SPEECH

In the Declaration of Rights article of the Alaska Constitution, freedom of speech is guaranteed to the people of Alaska by the following provision:

> Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.[32]

In my view, the majority's conclusion that Watts' conversation with the Framptons was immoral and therefore a cause for his nonretention had denied him his freedom of speech under both the Alaska Constitution and the 1st and 14th Amendments to the United States Constitution.[33]

The philosophical basis of the role that free speech plays in a democratic society has been magnificently stated by Justice Holmes in his dissenting opinion in *Abrams v. United States*, 250 U.S. 616, 630, 63 L. Ed. 1173, 1180 (1919), where he said:

> But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations

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[32] Alaska Const. art. I, § 5. See also the 1st and 14th Amendments to the United States Constitution.

[33] I have shown previously why I believe the issue of appellants' immorality in regard to the Open Letter is not properly before this court. Therefore, this discussion of free speech will be limited essentially to the majority's conclusion that Watts' constitutional rights were not infringed.

> of their own conduct that the ultimate good desired is better reached by free trade in ideas,—that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expressions of opinions that we loathe . . . .[34]

An equally cogent statement of the principles underlying the concept of free speech in our society is that of Justice Brandeis in his concurring opinion in *Whitney v. California*, 274 U.S. 357, 375-76, 71 L. Ed. 1095, 1105-06 (1927):

> Those who won our independence . . . believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; *that the greatest menace to freedom is an inert people; that public discussion is a political duty; and*

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[34] In 1859, John Stuart Mill wrote:

> The opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course deny its truth; but they are not infallible. They have no authority to decide the question for all mankind, and exclude every other person from the means of judging. To refuse a hearing to an opinion, because they are sure that it is false, is to assume that *their* certainty is the same thing as *absolute* certainty. All silencing of discussion is an assumption of infallibility. Its condemnation may be allowed to rest on this common argument, not the worse for being common . . . . John Stuart Mill, On Liberty 15 (McCallum ed. 1946).

> *that this should be a fundamental principle of the American government.* They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances, and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.[35] (Emphasis added.)

These principles of freedom of speech articulated in the writing of Justice Holmes and Justice Brandeis are appropriately relevent to analysis of the theory of our own state government and the role which the principle of freedom of speech should have in the democratic society provided for in the Constitution of Alaska.

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[35]See also Justice Black's concurring opinion in Barenblatt v. United States, 360 U.S. 109, 145-46, 3 L.Ed.2d 1115, 1140 (1959), where he said:

> The First Amendment means to me, however, that the only constitutional way our Government can preserve itself is to leave its people the fullest possible freedom to praise, criticize or discuss, as they see fit, all governmental policies and to suggest, if they desire, that even its most fundamental postulates are bad and should be changed; 'Therein lies the security of the Republic, the very foundation of constitutional government.' On that premise it has grown to greatness. Our Constitution assumes that the common sense of the people and their attachment to our country will enable them, after free discussion, to withstand ideas that are wrong.

See also Justice Black's concurring opinion in Wieman v. Updegraff, 344 U.S. 183, 193, 97 L. Ed. 216, 223 (1952).

Freedom of speech is the basic tenent of a self-governing democratic society[36] and has been guaranteed to the people of the State of Alaska by the framers of our constitution. For a democratic society to function it is imperative that the public be informed, and have made available to it reasonable means of obtaining information, on all public issues. And it is here that the principle of freedom of expression plays its crucial part in enabling our citizens to participate in the decision making processes of our democratic society.[37]

In regard to the content of permissible public debate, I believe the statement of the Supreme Court in *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 11 L.Ed.2d 686, 701 (1964), is apposite:

> Thus, we consider this case against the background of a profound national commitment to the principle that debate on public issue should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.[38]

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[36]See Meiklejohn, Free Speech and Its Relation to Self-Government, (1948):

> The principle of the freedom of speech springs from the necessities of the program of self-government. It is not a Law of Nature of Reason in the abstract. It is a deduction from the basic American agreement that public issues shall be decided by universal suffrage.

[37]See Frantz, *The First Amendment in The Balance*, 71 Yale L.J. 1424 (1962); Emerson, *Toward A General Theory of The First Amendment*, 72 Yale L.J. 877 (1963).

[38]It is also of significance that Justice Brennan, in writing for the court, said:

> That erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need . . . to survive,' . . . . 376 U.S. at 271-72, 11 L.Ed.2d, at 701.

Note in Garrison v. Louisiana, 379 U.S. 64, 74, 13 L.Ed.2d 125, 133 (1964), Justice Brennan wrote:

With these principles in mind, it is appropriate to examine the role that education performs in our current society. Few would contest that the education of our people is one of the paramount functions of our state government; is essential in the attainment of a responsible citizenry and to the development of the individual.[39] The role of the teacher in this country's system of education, and in turn education's part in a democratic society, is articulated by Justice Frankfurter in his concurring opinion in *Wieman v. Updegraff*, 344 U.S. 183, 196-97, 97 L. Ed. 216, 224-25 (1952), in the following manner:

> To regard teachers—in our entire educational system, from the primary grades to the university—as the priests of our democracy is therefore not to indulge in hyperbole. It is the special task of teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens, who, in turn, make possible an enlightened and effective public opinion. Teachers must fulfill their function by precept and practice, by the very atmosphere which they generate; they must be exemplars of open-mindedness and free inquiry. They cannot carry out their noble task if the conditions for the

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> [O]nly those false statements made with the high degree of awareness of their probable falsity demanded by New York Times may be the subject of either civil or criminal sanctions.

[39] See, Chief Justice Warren's opinion in the school segregation case, Brown v. Board of Education, 347 U.S. 483, 493, 98 L. Ed. 873, 880 (1954), where these views were voiced in the following manner:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities . . . . It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.

> practice of a responsible and critical mind are denied to them. . . . They must be free to sift evanescent doctrine, qualified by time and circumstances, from that restless, enduring process of extending the bounds of understanding and wisdom, to assure which the freedoms of thought, of speech, of inquiry, of worship are guaranteed by the Constitution of the United States against infraction by national or State government.[40]

It is on the basis of the foregoing that I dissent from the majority's treatment of the free speech issue as it relates to appellant Watts.[41] The majority holds that since the "constitutional question" is close it chooses to resolve doubts in appellant Blue's favor, particularly where the record contains "no evidence that false or misleading statements were made." Yet Watts' constitutional rights of freedom of speech remains unvindicated because he spoke "on school

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[40] Justice Frankfurter also wrote in Wieman v. Updegraff:

> That our democracy ultimately rests on public opinion in a platitude of speech but not a commonplace in action. Public opinion is the ultimate reliance of our society only if it be disciplined and responsible. It can be disciplined and responsible only if habits of open-mindedness and of critical inquiry are acquired in the formative years of our citizens. The process of education has naturally enough been the basis of hope for the perdurance of our democracy on the part of all our great leaders, from Thomas Jefferson onwards.

[41] Since I have concluded that appellants did not violate Regulation E-7 of the Seward School Board, I consider it unnecessary to deal with the majority's assertion that "There is no constitutional question associated with the Board's conclusion that publication and circulation of the Open Letter to the general public was substantial non-compliance with Board Regulation E(7)." On the contrary, I am of the opinion that there are constitutional questions of free speech inherent in this issue, particularly in light of the circumstances which I have previously outlined and also in view of the fact that the regulations in no way provided access to public opinion on public issues.

premises", "during school hours", (a highly doubtful conclusion of the majority's) "to support a private move to oust the Superintendent", and because this conduct was "immoral." It is undisputed that Watts made no false or misleading statement to the Framptons. I fail to discern the constitutional distinction upon which Watts' speech is denied the very protection the majority now accords to Blue's talk to the longshoremen.

The majority's holding goes a long way in stifling any movement for reform or change in our educational system which happens to originate in the mind of an individual teacher. Under their view, before a teacher could constitutionally attempt to gather support to bring about a change in school administrators, such a goal must have had already attained the status of a public goal. As to any given facet of our educational system, diverse opinions and philosophies are held by the people of this state. The effect of the majority's decision is to discourage the one group that is most intimately aware of the workings and problems of our educational system from making their views known on this most vital of public issues.[42] The majority's attitude is summed up by their reliance upon *Adler v. Board of Education*[43] and its rationale that even though one is removed from his em-

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[42] I agree that any school system must have the means of maintaining proper discipline, screening undesirable teachers, and removing incompetent teachers. If it is necessary to accomplish this by means of a "catch-all" language, then school boards have authority to enact such catch-all regulation, violations of which could be the basis of statutory nonretention or revocation of a teacher's certificate.

[43] 342 U.S. 485, 96 L. Ed. 517 (1952). See also Shelton v. Tucker, 364 U.S. 479, 5 L.Ed.2d 231 (1960); Barenblatt v. United States, 360 U.S. 109, 3 L.Ed.2d 1115 (1959); Sweezy v. New Hampshire, 354 U.S. 234, 1 L.Ed.2d 1311 (1957); Wieman v. Updegraff, 344 U.S. 183, 97 L.Ed. 216 (1952), for post Adler decisions of the Supreme Court in the area of academic freedom. In light of these subsequent decisions, I question whether Adler would receive the same treatment today.

ployment in government service, he is not thereby denied any constitutional rights (i.e., free speech in particular).[44]

I believe that the majority's decision has denied Watts his constitutional right to speak freely as guaranteed by both the Alaska Constitution and the 1st and 14th Amendments to the United States Constitution. Watts had the constitutional right, whether erroneous or not, to be critical of his superintendent; to discuss with his fellow teachers the possibility of effectuating the superintendent's removal and to solicit the support of his fellow teachers for his views.[45]

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[44]See Professor Chafee's answer to the Adler philosophy in *Thirty-Five Years With Freedom Of Speech*, 1 Kan. L.Rev.:

> I am disturbed by the common assumption that deprivation of a job connected with the government is not a substantial loss of freedom. The theory is that governmental activity is a special sort of thing and not a general privilege; hence the ousted individual is simply thrust out of a small corner of life, with plenty of other places left open to him. Thus, in sustaining the New York Feinberg Law, the Supreme Court reasoned that a school teacher is not deprived of freedom of speech and assembly when he is thrown out of the public schools. Adler v. Board of Education, supra note 67. In short, when a teacher can think and talk as much as he likes by merely giving up a government job, this is freedom.
>
> Such a theory seems to me to assume what is not so. The man was trained to be a public school teacher and to spend his life in that profession. Since thinking and talking are his business, restrictions on them as a condition of holding his job are peculiarly repugnant, while it is like cutting off his hand for him to go elsewhere. And where else? Private schools are fully staffed and unlikely to take a man who has quit in a controversy. A school teacher is not prepared for a trade and he is too old to make a fresh start. The Court's reasoning would logically make out that disbarment of a lawyer with heterodox opinions is no infringement of freedom of speech and thought.

[45]This is to say no more than our legislature has already recognized by statute.

One of the most important functions of this court is to assure that constitutional rights are vindicated. By today's decision the right of free speech in this state has sustained a serious encroachment. Apparently the principles that free speech encompasses "uninhibited", robust", and "wide-open" debate on public issues has been shunted aside. In its place has been substituted a holding that cannot fail to curtail discussion among those most intimately concerned with this state's educational system.[46]

[Filed December 27, 1966.]

PETITION FOR REHEARING

COME NOW appellants, by and through their attorney, JOE P. JOSEPHSON, and petition this honorable court, pursuant to Supreme Court Rule 35, for rehearing. This petition is based upon the following grounds:

A. ORDER (1):

1. The court has overlooked, or failed to consider, constitutional questions associated with Regulation E-7 of free speech, press and association under the First Amendment to the Constitution of the United States, as made applicable to the several states by the 14th Amendment.

2. The court has overlooked, or failed to consider, whether Regulation E-7 is applicable in the case of the non-retention of tenure teachers, being under the heading of "School Board - General Policies", and in view of the dis-

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[46]It is necessary for me to state that I do not subscribe to the procedure of this court which prohibits a dissenting justice from either commenting on any reference the majority makes to his dissent, or from revising his dissenting opinion in light of the majority's revision. This dissenting opinion has been published under the foregoing "established procedure" of this court.

tinction made in the "regulations" themselves between "regulations" and "policies", and since Regulation E-7 is procedural and not substantive. (See, "Regulations", C-6).

3. The court has overlooked, or failed to consider, questions of due process of law under the 14th Amendment in reaching the question of the alleged violation of Regulation E-7 without oral argument or supplemental briefs regarding that question after remand to this court from the Supreme Court of the United States and following this court's supplementation of the record subsequent to the filing of briefs by counsel. Counsel for appellants has been deprived of the opportunity to make argument, written or oral, upon the record as supplemented or even to know the state of the record.

4. The court has overlooked, or failed to consider, questions of equal protection of the laws under the 14th Amendment in reaching the question of the alleged violation of Regulation E-7, after remand, without oral argument or supplemental briefs regarding that question and in view of the extreme sanctions imposed against appellants for the alleged violation.

B. ORDER (2):

1. The court has overlooked, or failed to consider, the principle of *res judicata* in reversing the decision of the Superior Court, from which no appeal was taken by either party, that the circulation by appellants of the open letter was not "immorality" within the meaning of the statute.

2. The court has overlooked, or failed to consider, the principle of equal protection of the laws under the 14th Amendment in reversing the decision of the Superior Court regarding the open letter, in the light of the practice applied against these petitioners in this court's first opinion wherein these appellants were foreclosed from the treatment of issues not deemed to have been raised.

3. The court has overlooked, or failed to consider, the principle of due process of law under the 14th Amend-

ment in reversing the Superior Court's decision regarding the open letter under procedural conditions which denied counsel the opportunity to brief or argue the issue.

C. ORDERS (2) and (3):

1. In these orders, the court has overlooked or failed to consider adequately raised or constitutional issues regarding due process of law under the 14th Amendment to the Constitution of the United States, resulting from construction of the term "immorality" so as to render the word a "catch-all" covering "a broad range of conduct". As construed, the term is unconstitutionally vague, and the court overlooked or failed to consider the problem of vagueness as it relates to due process of law.

2. In these orders, the court has overlooked or failed to consider the recent decision of the Supreme Court of the United States in *Bond v. Floyd*, ____ U.S. ____, 35 L.W. 4038 (87 Oct. term, 1966), in which the United States Supreme Court held that the Georgia legislature's refusal to seat petitioner, because of certain anti-war statements he had uttered, contravened the petitioner's rights under the 1st Amendment. The court held that a state may not apply stricter standards of speech to a public official than to a "citizen-critic". Distinctions made by this court of the cases of *New York Times Co. v. Sullivan*, 376 U.S. 254, and *Garrison v. Louisiana*, 379 U.S. 64, are shown by the opinion of the court in the *Bond* case, *supra*, as unfounded and not merited, as the *Bond* opinion discussed earlier case law.

D. ORDERS (1), (2), and (3):

In refusing to allow the dissenting judge to comment upon the majority's references to his dissent or to revise his dissent in the light of the revision, the court has overlooked or failed to consider due process and equal protection questions under the 14th Amendment, inasmuch as such comments or revisions by the dissenting judge, if permitted, might have persuaded another justice of this honorable court to reach opposite conclusions.

DATED at Anchorage, Alaska, this 24th day of December, 1966.

Respectfully submitted,

/s/ Joe P. Josephson
JOE P. JOSEPHSON,
Attorney for Appellants

[Certificate of Service dated December 27th, 1966.]

[Filed February 2, 1967.]

File No. 427

OPINION

[No. 380 - December 7, 1966]

On petition for rehearing:

In their petition for rehearing under Supreme Court Rule 35 appellants allege that the court has "overlooked, or failed to consider" constitutional questions concerning free speech, due process of law and equal protection of the laws with respect to the violation by appellants of Seward School Board Regulation E-7.

This court has not overlooked or failed to consider any question presented to it. The fact is that at no time during the six years this case has been in existence has it ever been argued, either in the administrative tribunals or courts, that there were any constitutional questions related to the issue of the validity and application of Regulation E-7.

Supreme Court Rule 9(e) requires that an appellant shall file with his designation of record a concise statement of the points on which he intends to rely on the appeal. Supreme Court Rule 11(5), (6), and (8) requires a statement of the questions presented for review, a specification of errors relied upon, and an argument to be contained in the

appeal brief. Appellants have failed to comply with any of these requirements with respect to the constitutional aspects of Regulation E-7 which they mention for the first time in their petition for rehearing.

This court has held that it will not consider matters on appeal which were not first presented to the lower courts[1] and that it will not consider on appeal matters which have not been presented in compliance with Supreme Court Rules 9(e) and 11(5), (6), and (8).[2]

Supreme Court Rule 35 provides in part that:

> The court may order a rehearing of a matter *previously decided* if, in reaching its decision
>
> (1) The court has overlooked, misapplied or failed to consider a statute, decision or principle directly controlling . . . . (Emphasis added.)[3]

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[1] Sanuita v. Common Laborer's Union, 402 P.2d 199, 201 (Alaska 1965). Pollastrine v. Severance, 375 P.2d 528, 531 (Alaska 1962).

[2] Sanuita v. Common Laborer's Union, 402 P.2d 199, 203 (Alaska 1965); Alaska State Housing Authority v. Vincent, 396 P.2d 531, 533 (Alaska 1964); Williams v. DeLay, 395 P.2d 839, 847 (Alaska 1964); Apex Concrete Co. v. Bray, 395 P.2d 514, 517 (Alaska 1964); Isaacs v. Hickey, 391 P.2d 449, 452 (Alaska 1964); Thomson v. Wheeler Constr. Co., 385 P.2d 111, 114 (Alaska 1963); Gregory v. Padilla, 379 P.2d 951, 954-55 (Alaska 1963); McLemore v. Harris, 374 P.2d 410 (Alaska 1962); Veal v. Newlin, Inc., 367 P.2d 155, 157 (Alaska 1961). See: David D. Beck v. Washington, 369 U.S. 541, 553, 8 L.Ed.2d 98, 109, *rehearing denied*, 370 U.S. 965, 8 L.Ed.2d 834 (1962) where similar holdings by the Supreme Court of Washington were sustained.

[3] Supreme Ct. R. 35 states:

(a) Grounds for Petition. The court may order a rehearing of a matter previously decided if, in reaching its decision

(1) The court has overlooked, misapplied or failed to consider a statute, decision or principle directly controlling; or

(2) The court has overlooked or misconceived some material fact or proposition of law; or

This rule was intended to provide a procedure for timely drawing to the court's attention its omission to consider a statute, decision, or principle which was *directly controlling* in a matter which had *previously been decided* by the court. It was not intended as a device for raising questions which had never before been presented to the appellate or lower courts and administrative boards. This court will not consider questions raised for the first time on petition for rehearing.[4]

Appellants allege that their constitutional rights were prejudiced by this court's refusal to permit a dissenting justice to revise his dissent in the light of a revision in the majority opinion. There is no such rule of court, nor is such a practice followed. The practice which is followed by the court is based on the premise that cross comments must end sometime, therefore the dissenting opinion comments freely

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(3) The court has overlooked or misconceived a material question in the case.

A rehearing will not be granted if it is sought merely for the purpose of obtaining a reargument on and a reconsideration of matters which have already been fully considered by the court.

(b) Time for Filing-Form of Petition. An original and three legible copies of a petition for rehearing must be filed within ten (10) days after judgment. The petition must be supported by certificate of counsel that in his judgment it is well founded and that it is not interposed for delay. The petition shall specifically state which of the above grounds exists, and shall specifically designate that portion of the opinion, brief, the record, or particular authority which the petitioner wishes the court to consider. The petition shall be prepared in conformity with Rule 12(b) and when filed shall be accompanied by proof of service on all parties. No petition for rehearing shall exceed three type-written pages. No memoranda or briefs in support of or in opposition to a petition for rehearing shall be received unless requested by the court.

[4] A. F. Estobrook Co. v. Industrial Acc. Comm'n, 177 Cal. 767, 177 Pac. 848 (1918); Holohan v. Melville, 41 Wash. 2d 380, 255 P.2d 899 (1953).

on the majority opinion and the majority then comments briefly on the dissent to the extent necessary to inform the losing party that the points raised by the dissent had in fact been considered by the majority, thereby avoiding petitions for rehearing based on the fact that the court "overlooked, or failed to consider" a controlling point.[5] Where a revision in the text of the majority opinion is made after a dissenting opinion has been written, the dissent would have another opportunity to comment on the change and the majority would have one opportunity to comment briefly on the revision of the dissenting opinion.

While not participating in consideration of the petition for rehearing under this court's established practice, Justice Rabinowitz has authorized the majority to state herein that he has directed the Clerk of this court and West Publishing Company to delete footnote 46 from his dissenting opinion.

Rehearing is denied.

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[5]See Supreme Ct. R. 35 quoted in note 3 *supra*.

[Filed February 10, 1967.]

MANDATE

To: Superior Court of the State of Alaska,
Third Judicial District, at Anchorage.

James A. Watts and Walter B. Blue filed an appeal from a judgment of the Superior Court, Third Judicial District at Anchorage, in Civil Action No. 61-728 entitled "JAMES A. WATTS and WALTER B. BLUE, Petitioners, vs. SEWARD SCHOOL BOARD and BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, Respondents." The case was heard by this court on April 20, 1964. On September 21, 1964 the court filed its written opinion and entered judgment affirming the judgment of the superior court. Appellants filed a petition for a writ of certiorari in the Supreme Court of the United States. The petition was granted on May 3, 1965 and the September 21, 1964 judgment was vacated and the case remanded to this court. On December 7, 1966 this court filed its written opinion and entered judgment affirming in part and setting aside in part certain conclusions of the Seward School Board. Appellants' petition for rehearing was denied on February 2, 1967.

It Is ORDERED:

1. That the Seward School Board's conclusion that appellants were guilty of substantial noncompliance with Board Regulation E(7) is affirmed as a separate and independent cause for their nonretention.

2. That the Seward School Board's original conclusion that appellants were guilty of immorality within the meaning of the statute as it then defined that term, for their part in compiling, reproducing and distributing the Open Letter containing false statements disparaging of the Superintendent is affirmed as a cause for their nonretention.

3. That the Seward School Board's conclusion that appellant Watts was guilty of immorality, as it was then defined by statute, for his activities in soliciting teachers to

join in a private move to oust the Superintendent is affirmed as a cause of his nonretention.

4. That the Seward School Board's conclusion that appellant Blue's speech to the longshoremen's union constituted immorality, as it was then defined by statute, is set aside for not being supported by substantial evidence.

5. Appellees shall recover from appellants costs and attorney's fees as shown below.

WITNESS The Honorable Buell A. Nesbett, Chief Justice of the Supreme Court, State of Alaska, this 10th day of February, 1967.

Costs and Attorney's Fees:

Duplicating appellees' brief	$ 70.00
Attorney's fees	300.00
Total	$370.00

/s/ J. M. McPhetres
JOSEPHINE M. McPHETRES
Clerk, Supreme Court,
State of Alaska

[SEAL]

TRANSCRIPT OF PROCEEDINGS BEFORE THE SEWARD SCHOOL BOARD, NOVEMBER, 1960

[1]

The meeting was called to order by Cecil Casey, President of the Seward School Board. The following Board members answered the roll call: Mrs. Skinner, Mr. McRae, Mr. Burke and Mr. Casey.

MR. CASEY: This is a public hearing, it is not a trial and we will appreciate the cooperation from the audience by not entering into the conversation. The purpose of this meeting is to hold a hearing concerning the non-retention of Mr. Watts and Mr. Blue who were non-retained under the Session Laws of Alaska, 1959. At this time I would like to request to have an opening statement for the record. Mr. Burr is the counsel for the School Board and

MR. WALTON: Let me introduce myself, I am Peter Walton and we want to contest the justification for their non-retention by the Seward School Board as school teachers. They were prior to March 15 delivered letters constituting notices of non-retention to which were attached bills of particulars and I think that we may safely sum up the charges contained in those bills of particulars as these: Both appellants were charged with having been guilty of acts of immorality which intended to bring them in the teaching profession in public disgrace. They were secondly charged with having not complied with certain regulations of the Seward School Board and thirdly they were charged with having carried to the people of Seward a petition for the recall of certain board members. Fourthly they were charged with having assisted with the printing and distribution of a open letter allegedly containing false and misleading statements against the Superintendant with the intent allegedly of injuring the professional standing of the superintendant and allegedly with the intent of destroying community and public confidence in the administration. I take this opportunity to summarize the charges because otherwise I feel that there might be some confusion. These are not what you call concisive statements. The testimony will

show that whatever the appellants in fact did do certainly it was not immoral conduct. The testimony will show that the appellants certainly did not fail to comply with any regulations ever adopted by this Board. The testimony will show that the petition seeking recall of certain board members did not contain statements which could not be substantiated or which were false. And even if the testimony were that they had assisted in the printing and distribution of an open letter which will be put in evidence and even if the evidence did show that these gentlemen did distribute petition seeking recall of certain board members and even if the evidence should show Mr. Blue appeared before a longshoreman's union meeting, none of these constitute immoral conduct. My second point is this rehearing results from a decision from the Board of Education Board of Appeals returning to this Board the matters which it once before considered. I would like to remind the board that in its decision the State Board declared: "This is the first appeal heard by the State Board of Education under the 1960 law accordingly a sufficient and thorough record should be made of non-retention hearings before school boards. Such a record will enable the Board of Appeals to make a more intelligent decision on the basis of the record. In the instant case a thorough and sufficient record is essential for the protection of both the non-retained teacher and the public. And I wish to assure the board and Mr. Burr that we will not in this hearing endeavor to raise technical objections to exclude from evidence matters which we feel the State Board of Appeals desires to have in their records and make the thorough and sufficient record which they have requested be made. We hope also that we will be extended the same courtesy. I am sure we will for there is no doubt in my mind and I am sure there is no doubt in Mr. Burr's mind but that this matter is going to go to the State Department of Education Board of Appeals on another appeal regardless of the outcome of this hearing. And I have just one further comment [2] and I would like to ask

the present members of this board if there are any members here who would like to disqualify themselves from hearing this matter tonight on account of the personal bias and kind of a predisposition or predeliction of the rule in one way or the other and hearing no answer then I would request an opportunity in the nature of [blank] pose certain questions to certain members of the board. Is there any objection to this? Mr. McRae, let me inquire, sir, do you feel that you can impartially hear this matter tonight and do you feel sir that you do not at present entertain in your own mind an opinion as to whether or not these appellants were guilty of the acts with which they have been charged?

MR. MCRAE: I say that I have an open mind.

MR. WALTON: Would you say sir that you have an open mind now.

MR. MCRAE: Yes, I have an open mind.

MR. WALTON: Now Mr. McRae, do you in your own mind feel that these appellants are unethical teachers at this time?

MR. MCRAE: I would say yes.

MR. WALTON: You do. Don't you feel sir that your opinion that they are unethical might have a little bit of influence upon your opinion tonight?

MR. MCRAE: It is up to you to convince me that they are not.

MR. WALTON: You feel the burden is upon the appellants, is that it? I see. It would not be correct would it to say that your mind is open. You have an opinion that is up to the appellants to dislodge.

MR. MCRAE: That is true.

MR. WALTON: Thank you. And it is true, is it not, that you recently stated in a radio speech broadcast on October 30, 1960 "now we all know how one bad apple will spoil the barrel, just imagine what three unethical teachers can do to a school system" Were these your words sir?

MR. MCRAE: Yes.

MR. WALTON: And by three unethical teachers you referred to the appellants and to Mr. William Zwick, did you not?

MR. MCRAE: I didn't refer to anybody in particular.

MR. WALTON: Who were you referring to?

MR. MCRAE: You can take it as it was.

MR. WALTON: Whom did you refer to sir?

MR. MCRAE: I didn't refer to anybody.

MR. WALTON: It was just a coincidence that you picked the number three.

MR. MCRAE: That's right.

MR. WALTON: Now, in the news speech sir, did you not say "through a series of whispering [3] campaign, false statements, unsigned complaints soap box speeches and outright lies they set out to confuse the public." Who were you referring to sir?

MR. MCRAE: I wasn't referring to anybody in particular.

MR. WALTON: Oh, but you were referring to someone when you said "They set out to confuse the public" who would that be sir?

MR. MCRAE: I didn't specify anybody.

MR. WALTON: No you didn't specify, but who were you thinking of?

MR. MCRAE: I was just drawing a picture of what could happen and what did happen.

MR. WALTON: Oh you say sir, that did happen?

MR. MCRAE: It could have happened.

MR. WALTON: Did it happen?

MR. MCRAE: It did happen.

MR. WALTON: And who caused the, and who caused lies to be distributed?

MR. MCRAE: I told you I didn't have anybody, any particular people in mind.

MR. WALTON: Then perhaps it didn't happen at all.

MR. MCRAE: That's what we're having this case for.

MR. WALTON: I would like to inquire if I may of Mr. Casey. Mr. Casey, do you also feel that the burden of

proof in this hearing is upon the appellant to dislodge the opinion that you entertain in your mind as to their guilt of the charges filed?

MR. CASEY: Would you repeat that please, Mr. Walton.

MR. WALTON: You head Mr. McRae state that he has an opinion that these persons, these appellants, have been guilty of the charges levied against them and tonight it is their duty to dislodge that opinion from his mind, have you not? Is that likewise your opinion of the purpose of this meeting?

MR. CASEY: I have an open mind, Mr. Walton.

MR. WALTON: And you have no previous positions to conclude that these appellants are unethical teachers?

MR. CASEY: I have an open mind I came here tonight to again try to solve this problem.

MR. WALTON: I believe you stated sir in a recent radio broadcast that personal personnel difficulties have arisen largely through the self-seeking individuals and their refusal to come even part way. Were you referring to the appellants, sir?

MR. CASEY: I could have been referring to a number of people, Mr. Walton.

MR. WALTON: Who were you referring to sir?

[4] MR. CASEY: To a number of people Mr. Walton.

MR. WALTON: Who were you referring to sir.

MR. CASEY: As I stated.

MR. WALTON: Can you please identify them. Were the appellants among these whom you were referring.

MR. CASEY: I wouldn't say directly anymore so than any others.

MR. WALTON: Were they sir, yes or no.

MR. CASEY: No I don't think they were any more than anybody else.

MR. WALTON: I take it your answer is no.

MR. CASEY: You may take it Mr. Walton.

MR. WALTON: I am going to ask that Mr. McRae and Mr. Casey, particulary Mr. McRae, decline to serve on this board hearing tonight.

MR. BURR: Will you afford me the opportunity of attempting to reestablish these board men.

MR. WALTON: Certainly, proceed.

MR. BURR: First of all, let me state for the record that it's my contention on behalf of the board that the board members as such are entitled to an opinion which I would compare favorably with that of a prosecuting attorney. They admittedly are the people who signed, prepared and signed and caused to be served on each of the appellants the statement of reasons for their non-retention. Understandably they have a biased opinion. Understandably so. I see no reason to disqualify Mr. McRae or any other member of the board for having a firm conviction in their mind. I daresay that they would be ill advised to say otherwise. They would be in effect saying what they have charged in the bill of particulars is not true before we even start and for that reason for the record I would like to tell Mr. McRae and also the president of the board Mr. Casey that while I don't feel they're disqualified for having an opinion as to what they have charged each of these teachers with, I would like to advise them and for the record ask their cooperation in keeping an open mind for the purpose of this hearing and hearing everything including the evidence that teachers Mr. Blue and Mr. Watts present and weighing that as equitably and as impartially as they can as members of this board without regard with what has heretofore taken place. Now if they can promise each of the respondents that they intend to do that I would further advise the members of the board that contrary to the opinions they have expressed it's my feeling that the initial burden of proving the sufficiency of the charges against Mr. Blue and Mr. Watts is on the board and I'm prepared to make that proof. What your private opinion is I'm really not concerned with because I'm assuming that we are in full accord with each of the charges that have been made against Mr. Blue and Mr. Watts. I dare say I wuld recommend dismissal of this case at this point if I was convinced otherwise. Now, please proceed.

MR. WALTON: I take it then that the board members do understand that the board has the burden of proof not the appellants.

[5] MR. BURR: I would request the boards member to be admonished and if they're not convinced after the testimony they hear that the board has established each and every allegation I would again instruct them that they are duty bound to make a decision in favor of the respondents or the appellants.

MR. WALTON: Thank you. I reiterate my request that board members Mr. Casey and Mr. McRae disqualify themselves for reasons as stated here.

MR. BURR: For the record I would like to take this opportunity also of stating that I am not at all sure that this is at all proper at this point, however I have no objections to it if the counsel so requests.

MR. WALTON: Perhaps we could have some affirmative acknowledgement of my request as the either in the form of agreeing to it or declining to disqualify yourselves. This will be one of the matters that the State Board may have to rule.

MR. BURR: Since you are challenging the president of the board have you any suggestion as to his rule on the motion?

MR. WALTON: I ask them to disqualify themselves.

MR. CASEY: Mr. McRae, at this time would you like to disqualify yourself at the request of the appellants.

MR. MCRAE: I don't see how we could have a meeting if we don't have a quorum.

MR. CASEY: I take it then that you do not wish to disqualify yourself then. For the record, Mr. Walton I don't feel that I could disqualify myself.

MR. BURR: For the record I would like to direct two final questions, one to each of the board members. Mr. Mc Rae, do you feel that in spite of the position that you have stated, that you can hear all of the evidence, both for and against Mr. Blue and fairly and impartially at this time without regard to what has taken place before this. To fairly and impartially weigh the evidence and render a decision.

MR. MCRAE: Yes I do.

MR. BURR: And Mr. Casey, do you feel likewise.

MR. CASEY: Yes sir, I do.

MR. BURR: I should like to at this time offer Exhibit No. 1 which is a notice of non-retention directed to Walter H. Blue and also the bill of particulars which is appended to the notice which bears the date of March 19, 1960 and as I recall the earlier hearing acknowledged service of this document.

MR. WALTON: No objections.

MR. BURR: That's Board Exhibit No. 1. I should like to offer Exhibit No. 2 which is a similar type document which is notice of non retention and bill of particulars for Mr. James Watts, Seward Public School teacher. I would like to offer a letter signed by one Jerry Neadrick as Exhibit 3. This letter bears the date of April 23, 1959.

MR. WALTON: Mr. Burr, I would like to see you get that in I think we ought to consider the rules of evidence relaxed and presume you will afford me the same levity, therefore I make no objection on that understanding.

[6] MR. BURR: If you are saying you were about to offer some letters, I have no objections. Exhibit 4 is a statement signed by Mildred Kirkpatrick of the, I beg your pardon, Kirkpatrick Printing Co. by Mildred E. Kirkpatrick.

MR. WALTON: No objection.

MR. BURR: Exhibit 5 is a letter from Charles E. Miller.

(Mr. Walton conferred with his clients at this point.)

MR. WALTON: I will make subject to my client's approval. I will make no objection to the introduction of this letter for such matters as are from its contents are patently within the knowledge of its author, but as to such statements that are patently or apparently hearsay, then to such statements I must raise a formal objection. Now this will go to State Board and of course they will have to weigh it accordingly. This I state while my client is reading the letter and before he has authorized me to make that statement. May I inquire Mr. Burr, I realize all this is going on tape, do you represent to this board that the matters stated in this third

paragraph are matters which were within the personal knowledge of the person who wrote the letter.

MR. BURR: The third paragraph. It would appear to be the recitation of a statement disclosed by a student to the parent.

MR. WALTON: Yes, that is also my understanding and I just wanted to clear it up. Yes, as I stated it may be introduced subject to the qualifications that I posed.

MR. BURR: Exhibit No. 6 is an extract from a conversation between Mr. Condor and Mr. Fabricius on the eighth of September, 1958.

MR. WALTON: Before proceeding further, Mr. Burr, can you tell me is it the board's position that they desire to enlarge the bill of particulars which they earlier delivered to Mr. Blue and Mr. Watts?

MR. BURR: No.

MR. WALTON: Is it the board's intention to attempt to introduce evidence which is not specifically within the scope of the bills of particulars?

MR. BURR: It is not our intention.

MR. WALTON: Do you sir believe that Exhibit 5 comes within the scope of the bills of particulars?

MR. BURR: I would not have offered it if I had thought otherwise.

MR. WALTON: Wouldn't it perhaps have been better to offer the last one in evidence in rebuttal.

MR. BURR: Does it make a lot of difference, it goes in the same record.

MR. WALTON: Apparently then you conceded that it isn't relative as far as the affirming position of the Board goes?

MR. BURR: Oh, I would concede, I won't make a statement on such ironic irrelevancy. I'm extending the exhibit as evidence.

MR. WALTON: Can you please point to me what portion of the bill of particulars directed to Blue does exhibit No. 5 pertain.

[7] MR. BURR: Well, I'm not going to argue Mr. Wal-

ton, the merits of the several exhibits. If you want to make a statement concerning each one or more of the exhibits, feel free to do so.

MR. WALTON: Whether this is introduced as evidence or it is merely identified as Exhibit it still is going to get to the State Department of Education's Board of Appeals.

MR. BURR: I should hope so.

MR. WALTON: And I will just make passing observation that it does not appear to be relevant in any way. That is Exhibit No. 5. May I inquire, how many more of these letters do you intend to introduce?

MR. BURR: Why don't you wait until I complete my offer.

MR. WALTON: I was generous at the offset, but I'm afraid that my generosity might be taken advantage of.

MR. BURR: Why don't you just make the objection for the record and let's proceed.

MR. WALTON: What I want to do now is read it. I may not object.

MR. BURR: Exhibit 7? Did you want to make a statement Mr. Walton concerning that?

MR. WALTON: Wasn't that Exhibit 6?

MR. BURR: Exhibit 6, yes. I'm about to offer Exhibit 7. Exhibit 7 is the open letter to Seward School Board which bears the date of May 18, 1959, and appears to have been signed by the Seward Local of the American Federation of Teachers. Objections. Exhibit 8 is a letter from Mrs. Joyce Carver, former teacher of Kenai School, dated Oct. 30, 1960. Exhibit 9 is a letter signed by Charles D. Archer, dated Oct. 30, 1960.

Now, Mr. Walton, do you desire any or all of these exhibits to be read into the record or are you satisfied to have them tendered. I understand that this is supposed to be a public meeting and if you desire to have them read there is no objections.

MR. WALTON: No, Mr. Burr.

MR. BURR: The record indicates counsel for the respondents has indicated that there is no necessity for read-

ing the proper exhibits. Exhibit 10 is a letter from Morris L. Porter, Kenai, Alaska, bearing no date. Exhibit 12 is the School Board Regulations of Seward, Alaska, 1958.

MR. WALTON: You mean document entitled School Board Regulations?

MR. BURR: Yes. Exhibit 13 is a sworn statement appended to what appeared to be a duplicate copy of Seward School Board Regulations. One composite exhibit.

MR. WALTON: This appears to be a statement signed by Mr. Casey, Mrs. Whitmore, Mr. Howell and Mr. McRae. I'm sure all those persons are present and therefore I am sure that the Seward School Board will not object if I do make an exception to this document. I have attempted to be generous in the other matters because I have assumed that the persons who made the documents were not here and hence could not be called to testify, but that reason is not apparent here, therefore although they may be marked we will not surrender to be introduced over our objections.

MR. BURR: What was Exhibit 11? We don't have Exhibit 11 do we? I should like to offer [8] at this time Exhibit 11 which I neglected to mention and I'll append it as one composite exhibit. It is a transcript of the hearing earlier held in this same matter on the 8th of April, 1960.

MR. WALTON: You don't have to show it to me. My only objection here is a practical one, it's a voluminous document about 60 or 70 pages and I think it serves no useful purpose it's going to go up as exhibit but for that reason we urge that it not be introduced as evidence.

MR. BURR: Exhibit 13 for the record is the statement signed by the school board members to which is appended a copy of the regulations previously offered as Exhibit 12. You've seen that. That completes the exhibits that we have at this time. Do you have any comments as to any of them.

MR. WALTON: May I please see exhibit 12? It says on here exhibit 11. Where is that document which bore

the board members signature. Which one is that? Is that 13?

MR. BURR: 13 yes. At this time I should like to make one composite offer of all of the exhibits 1 through 13 into evidence for the purpose of this hearing. Hearing no objection I request a ruling.

MR. WALTON: Just one moment. I take it Mr. Burr that since the purpose of this meeting is to permit the appellants to confront those who have made statements detrimental to their character, that in addition to your offer you are prepared to guarantee us the right to confront the persons who have made the statements. Is that correct or is that incorrect?

MR. BURR: If this is a rehearing I should assume that you have the same rights that you had in the initial hearing.

MR. WALTON: I don't think you've answered my question.

MR. BURR: And in the initial hearing under the regulations as I understand it you have the right of being confronted with the witnesses whose testimony is to be used and to secure the presence of such witnesses you have the right to subpoena. It is my position you have put on notice the names of the witnesses whose testimony was used by the board to support each of the allegations and you have seen fit it in point of fact to subpoena some of these people. And the fact that you haven't subpoenaed Mr. Sadusky whose testimony was previously taken although not under Oath, which I concede, if you desire at this time to exercise the subpoena rights and to be confronted with Mr. Sadusky I will be happy to comply if it's all possible. If you want to exercise your subpoena rights you certainly can entertain it, I have no objections. And if not, if you don't care to exercise that right I, should like to tender the testimony of Mr. Sadusky as it appears in the previous transcript, as an exhibit. He was subject to cross examination.

MR. WALTON: Let me answer you Mr. Sadusky in a

minute. What about the other persons whose names appear on the letters which are introduced? Making statements which are derogatory and detrimental to the appellants' character. Are those authors also going to be available in order that the appellants may confront them at this time? I am particularly interested in the author of letter no. of exhibit no. 5.

MR. BURR: Exhibit 5 let me see that. Is Mr. Charles Miller present here by any chance?

MR. WALTON: I would like to state for the record that whereas we have exercised our subpoena rights with respect to Mr. Fabricious and Mr. Frampton, we had no inkling of an idea [illegible] [9] could not in anticipation of this hearing attempt to subpoena him.

MR. BURR: Do you desire at this time to exercise your rights to subpoena the persons whose testimony you are now aware is to be used by this board as a basis for supporting each and all of the allegations?

MR. WALTON: We definitely desire to subpoena Mr. Miller.

MR. BURR: I should like to inquire for the record if you have any other request other than Mr. Miller.

MR. WALTON: With regards to, is it Mr. Sandusky, we are prepared to let that old testimony be available for this board and to any higher board to which this matter may be appealed but may I inquire Mr. Miller's first name in order that we may —

MR. BURR: Charles E. Miller. Perhaps we could take his testimony in Anchorage to avoid the necessity of calling him to Seward. Since it pertains to but one of the appellants, Mr. Blue I would be willing to make a reporter available for the purpose of taking his testimony if you choose to request it.

MR. WALTON: Is that so? Would you care to also pay for Mr. Blue's transportation back and forth to Anchorage?

MR. BURR: I can't be so charitable Mr. Walton.

MR. BLUE: I would be willing to go up.

MR. WALTON: May I please see Exhibit 3? May I see

Exhibit 5? Are you prepared to tell us when this was excuted?

(Discussion between Mr. Fabricious and Mr. Burr to answer this question.)

MR. BURR: April the 8th. The night of the first hearing.

MR. WALTON: Well, Exhibit 5 we will object to, we will not object to the introduction of all of the other exhibits except Exhibit 5 and the exhibit wherein the board members certify that such and such regulations were regulations of the board. Which one is that? 13. For purely formal reasons we must object to those whose product is so damaging that we feel that the appellants should at least be confronted with the author before that could be introduced, and besides it appears to be hearsay at that. Could we submit it to the Board for execution of subpoena at this time. Directed to Charles E. Miller. Obviously this subpoena is to be rewritten.

MR. BURR: For the record Mr. Walton I think I think we should also advise you that we will plan to take the testimony of the girl from whom this statement was apparently taken. The daughter of Charles E. Miller. I don't personally know her name.

MR. WALTON: That may be your intention but we will object at that time if we so object.

MR. BURR: We're notifying you at this point that we are going to do this.

MR. WALTON: What is the girl's name.

MR. CASEY: I don't know Mr. Walton.

MR. WALTON: Have you ever talked to the girl?

[10] MR. CASEY: I've heard her name, but no I've never talked with her.

MR. WALTON: Has any of the board members ever talked with her? Could I inquire sir? I take it the answer is no, none of the board members have ever talked with this girl. Very well.

MR. BURR: Put daughter of Charles E. Miller and first name of whom is unknown.

MR. WALTON: I put it Jane Doe Miller, daughter of Charles E. Miller.

MR. BURR: Should we stipulate to take the statements of both of these people consecutively, the same day.

MR. WALTON: Oh, sure. Well, I'm not going to stipulate against this one if you want to take them at the same time. Why don't you fill in the date, Mr. Burr, at my office, perhaps your board members could initial the corrections.

MR. BURR: The subpoena duces tecum?

MR. WALTON: Well, they are not requested to sign the bottom portion. Just the top portion. You strike out dues was taken, you can strike out the whole bottom and we'll prepare copies for service only.

MR. BURR: You want this signed now, to be served?

MR. WALTON: Ya, you might fill in the time.

MR. BURR: It would occur to me that we should have a stipulation from the two appellants that they are willing to appear at a time to be decided upon at a subsequent date convenient to all parties and for that purpose take the testimonies of the two people without a public hearing as such. I could be as public as they wanted. We have no objections to that.

MR. WALTON: We are perfectly agreeable that their deposition may be taken in my office at a date to be fixed by you. However, I wonder how is the board going to rule upon questions which are then going to be asked?

MR. BURR: They'll have to be furnished copies of the statements the depositions.

MR. WALTON: I see. We'll make out objections and let them rule on them later, ok?

MR. BURR: Have you any better suggestion?

MR. WALTON: No.

MR. BURR: We can perhaps recess this hearing until next week if you care and bring the people down here.

MR. WALTON: It's not necessary. May we also stipulate that Mr. Blue may at the same time they give their de-

positions testify with response to their testimony because of course today he doesn't know what they are going to say.

MR. BURR: No objections. With exceptions Exhibits 5 and exhibit 13 Mr. Walton have you any further objections on the proffered exhibits?

MR. WALTON: No objections.

MR. BURR: I should request a ruling from the president of the board Exhibits 1 to 11 excluding exhibit 5. I should offer these exhibits in evidence for the purpose of this hearing.

[11] MR. WALTON: Then we are disputing only Exhibit 13?

MR. BURR: I am offering all of the exhibits except Exhibit 5.

MR. WALTON: Then the issue before the chairman is to rule upon my objections to Exhibit 13? Is it not?

MR. BURR: Yes.

MR. CASEY: I will reserve ruling on that at the present time. If you wish to proceed. I'll hold my ruling at the present time.

MR. WALTON: I take it they're not yet admitted then, is that correct? You have not yet ruled on my objection.

MR. BURR: He has reserved ruling on the point of the exhibit.

MR. WALTON: Therefore they are not yet admitted are they?

MR. BURR: They are marked for identification. I would request the reporter at this time to remind me if I should happen to forget it to renew the tender of all of these exhibits excluding exhibit 5 into evidence and request a ruling from the president of the board.

(The board will call as it's first witness Mr. Benjamin Frampton. Is he present?)

MR. CASEY: Now will you raise your right hand please. Do you swear to tell the truth and nothing but the truth so help you God.

MR. FRAMPTON: I do.

MR. BURR: Mr. Walton, we're not at all sure that this

microphone is picking up everything up. Do you think it would be wise to perhaps to test this?

MR. WALTON: Say, Mr. Burr, I wonder is Mr. Casey authorized by virtue of any law or any authority to administer oaths? Or is this something he has assumed?

MR. BURR: You're a notary public, would you care to administer the oaths?

MR. WALTON: I would prefer you to, it's your witness.

MR. BURR: Very well, would you stand and raise your right hand. Do you swear the testimony you are about to give Mr. Frampton will be the truth, the whole truth and nothing but the truth, so help you God.

MR. FRAMPTON: I do.

MR. BURR: Will you state your full name please sir.

MR. FRAMPTON: Benjamin F. Frampton.

MR. BURR: Your occupation.

MR. FRAMPTON: I'm a teacher.

MR. BURR: And where are you presently employed?

MR. FRAMPTON: I'm employed in the City of Seward, the elementary school.

[12] MR. BURR: And in what capacity are you presently employed?

MR. FRAMPTON: I'm a principal of the elementary school.

MR. BURR: And how long have you been so employed?

MR. FRAMPTON: For eleven years. This is my eleventh year.

MR. BURR: Do you know the appellants in this case Walter B. Blue and James A. Watts?

MR. FRAMPTON: Yes I do.

MR. BURR: Will you indicate by pointing to each of these individuals that you know them.

MR. FRAMPTON: That's Mr. Blue and that's Mr. Watts.

MR. BURR: Let the record indicate that the witness has indicated by pointing to the two gentleman sitting next to Mr. Walton at the counsel table. I should like to request at this time Exhibit 11 please. Mr. Frampton, do you

know each of the appellants in this case to be teachers, or former teachers of the Seward Public School system?

MR. FRAMPTON: Yes I do.

MR. BURR: And would you state for the record whether or not during the year 1959 either or both of these individuals were employed in the Seward school system.

MR. FRAMPTON: Yes I do.

MR. BURR: And would you state for the record whether or not during the year 1959 either or both of these individuals were employed in the Seward School system.

MR. FRAMPTON: Yes they were.

MR. BURR: Were either or both of these individuals employed in the Seward school system during the year 1958, to your knowledge. That's the school year 58 and 59.

MR. FRAMPTON: Yes they were.

MR. BURR: I should like to direct your attention to the spring of the year 1959 and ask you whether or not you recall having any particular conversation with either or both of these individuals with particular reference to the superintendent of the schools, Mr. Fabricious.

MR. FRAMPTON: Yes I have.

MR. BURR: Will you tell me approximately when such a conversation took place if you recall.

MR. FRAMPTON: It was April 28, 1959 before school, that morning.

MR. BURR: Do you remember the approximate time of the day that conversation took place.

MR. FRAMPTON: I can't say definitely, I imagine it was somewhere between 8:30 and 9:00 however.

MR. BURR: Mr. Frampton in your experience as a teacher and a principal in the Seward public school system, would that in your opinion be during school hours for a teacher.

MR. FRAMPTON: According to our regulations it would have been.

MR. BURR: Yes. Now will you tell me if you recall the substance of the conversation that you had with either of the individuals identified as appellants in this case.

[13] MR. FRAMPTON: Mr. Watts came by my office and spoke to me in the morning saying that he would like to see me in my wife's room.

MR. BURR: Your wife is a teacher also?

MR. FRAMPTON: Mrs. Frampton who teaches in the first grade. I went with Mr. Watts down to Mrs. Frampton's room and there he stated that he had been sent as representative of the group, and because he had been a friend of ours for a long time. He wanted to know if we would go along with the movement to oust Mr. Fabricious. He stated that we knew the certification of teachers is not the real issue. He said that he knew I was in the middle and didn't want me to get hurt. He said that they were quite sure they could get Mr. Fabricious and wanted to know if we would go along with them. We told him at that time that we could see no reason why anyone should try to get Mr. Fabricious and we considered he was doing all right and would have take a stand of Mr. Fabricious and the school board. Then we asked Mr. Watts what group was going along with him. Then he said under the circumstances he would rather not say. I believe that ended the conversation.

MR. BURR: Did you have any further conversation with Mr. Watts on that day or any subsequent day to your recollection concerning the same subject matter?

MR. FRAMPTON: I don't recall.

MR. BURR: Mr. Frampton, are you familiar with whether or not there are or there were at that time any regulations of the Seward Public Schools in effect?

MR. FRAMPTON: Yes, I believe at that time we had (end of tape)

MR. BURR: May I ask the reporter what the last question was?

MRS. FISH (RECORDER): Do you recall whether at that time there were at that time any regulations in effect?

MR. BURR: I believe your answer was that there regulations in effect in the spring of 1959.

MR. FRAMPTON: I believe that's correct.

MR. BURR: I should like to hand you Exhibit 12 for

identification and ask you whether or not you can identify that document sir?

MR. FRAMPTON: This is the one I had reference to.

MR. BURR: Would you state for the record Mr. Frampton if you can identify that document.

MR. FRAMPTON: Yes, this is the School Board Regulations that were given to us by the School Board.

MR. BURR: Would you tell me whether or not you had in your possession or at your disposal a copy of such regulations in the spring of 1959.

MR. FRAMPTON: Yes I did.

MR. BURR: Do you know of your own knowledge whether either or both of the respondents or appellants in this case, Mr. Blue and Mr. Watts, had such a document as you have in your hand?

[14] MR. FRAMPTON: Each teacher was supplied with one.

MR. BURR: Will you state whether or not as a principal and as a perfect employee of the Seward Public Schools whether or not it was the responsibility of the several teachers of the system to be familiar with the regulations that are identified as Exhibit 12.

MR. FRAMPTON: Yes they are required to become familiar with it.

MR. BURR: Thank you. I should like to direct your attention to Exhibit 12 for identification and particularly on page 3, subparagraph E, and sub-subparagraph 7 of that paragraph. Are you familiar with that particular portion of the regulations.

MR. FRAMPTON: Yes I am.

MR. BURR: Will you for the record state the substance of that paragraph.

MR. FRAMPTON: Regulations of the School Board. Grievances and complaints and communications from an employee shall be submitted to the Board through the Superintendant.

MR. BURR: At that point I should like to interpose this further question. Do you know whether or not prior to

the conversation that you had with Mr. Watts at the time you have just identified, whether or not he had processed or caused to be processed any complaints to the Seward Superintendent of Public Schools prior to his having the conversation with you and your wife.

MR. FRAMPTON: I do not know whether he did or not, for sure.

MR. BURR: Do you personally know of any such complaints that have been processed.

MR. FRAMPTON: Not up to that point.

MR. BURR: And would it not be one of the functions that would normally be brought to the attention of the principal.

MR. FRAMPTON: I should think so.

MR. BURR: Are you familiar with a bill of particulars that was distributed or caused to have been distributed by either or both of the appellants in this case in the spring or summer of 1959.

MR. FRAMPTON: I don't believe I am.

MR. BURR: May I have Exhibit 7 please. Let the record reflect I am handing the witness Exhibit 7 for identification. Have you ever seen a document such as that Mr. Frampton, before?

MR. FRAMPTON: I don't believe I've seen that before.

MR. BURR: We have no other questions. Your witness.

MR. WALTON: Now this April 28th conversation with Mr. Watts you say took place before school in the morning, I believe those were your words were they not?

MR. FRAMPTON: That's correct.

[15] MR. WALTON: And what time of the morning was that?

MR. FRAMPTON: I would judge it to be 8:30 and 9:00. Teacher's report at 8:30 and this certainly was before the children get there so I could judge it between 8:30 and 9.

MR. WALTON: And what time did you show for duty that day? What time did you go to school that day?

MR. FRAMPTON: I usually got there about 8:00

o'clock. I can't say definitely if it was 8 o'clock that day that I came but I usually arrive about 8 o'clock.

MR. WALTON: Did you have any particular occasion to look at the clock when Mr. Watts spoke with you.

MR. FRAMPTON: No I did not.

MR. WALTON: It might have been prior to 8:30 might it not?

MR. FRAMPTON: It's possible I couldn't say. However, I do know that it was not too long after our conversation that the class children came into the school to the rooms.

MR. WALTON: Are you sir familiar with an organization known as the S.D.T.A., Seward District Teachers' Association?

MR. FRAMPTON: Yes, I am.

MR. WALTON: Are you a member?

MR. FRAMPTON: I am.

MR. WALTON: Were you a member then?

MR. FRAMPTON: Yes, I was.

MR. WALTON: Were you aware of the fact that Mr. Watts was also a member?

MR. FRAMPTON: I certainly was.

MR. WALTON: And were you aware of the fact were you not that the S.D.T.A. had some negotiations with the School Board prior to April 28, 1959.

MR. FRAMPTON: With the School Board?

MR. WALTON: Yes.

MR. FRAMPTON: I'm not certain about that.

MR. WALTON: Do you recall any negotiations having been undertaken in the spring of 1959 between the S.D.T.A. and the Seward School Board.

MR. FRAMPTON: Oh yes, regarding two teachers there was some.

MR. WALTON: What were those negotiations concerning?

MR. FRAMPTON: It was concerning the dismissal of two teachers I believe.

MR. WALTON: Who were they?

[16] MR. FRAMPTON: Mrs. Armstrong and Mrs. Hallenbeck.

MR. WALTON: As a matter of fact sir, you were present at some of the board meetings at which negotiations were had between the Board and the S.D.T.A., were you not?

MR. FRAMPTON: May I state my point.

MR. WALTON: Yes and that would have been on March 30, 1959, would it not?

MR. FRAMPTON: Probably about that time.

MR. WALTON: It was almost a month before Mr. Watts came to you.

MR. FRAMPTON: Yes it would be about that time.

MR. WALTON: And at that prior meeting of March 30, 1959, Mr. Watts in fact represented the S.D.T.A. Grievance Committee, did he not?

MR. FRAMPTON: At that meeting. I believe he was.

MR. WALTON: Therefore you knew at that time that he represented the S.D.T.A. did you not?

MR. FRAMPTON: At that meeting.

MR. WALTON: Yes. The answer sir is what

MR. FRAMPTON: At that time he was a representative.

MR. WALTON: The S.D.T.A.?

MR. FRAMPTON: I believe so.

MR. WALTON: The only reason I'm soliciting the answer is to get it on the tape. And it is a fact, was it not in the March 30th meeting that considerable conflict between Mr. Fabricious and the S.D.T.A.

MR. FRAMPTON: Not that I could see. Not that I could notice.

MR. WALTON: Didn't you detect any difference of opinion between the S.D.T.A. and Mr. Fabricious with respect to the firing of those two school teachers.

MR. FRAMPTON: Not the personnel as a whole. Not the S..D.T.A. as a whole.

MR. WALTON: Then between whom?

MR. FRAMPTON: The minority who perhaps disagreed.

MR. WALTON: Mr. Watts only represented the minority?

MR. FRAMPTON: He agreed with the minority.

MR. WALTON: You're talking about the minority of the S.D.T.A.

MR. FRAMPTON: Yes.

MR. WALTON: I see, whoever it was in the S.D.T.A. that Mr. Watts represented that group disagreed with Mr. Fabricius, correct?

[17] MR. FRAMPTON: Possibly.

MR. WALTON: Well, isn't that what you just said?

MR. FRAMPTON: The minority probably did.

MR. WALTON: Now, when Mr. Watts came to you in your room on April 28, 1959, he referred to a meeting of the S.D.T.A. which was to be held that night, did he not?

MR. FRAMPTON: No, I think he didn't.

MR. WALTON: There was a meeting to be held that night wasn't it?

MR. FRAMPTON: There was a meeting to be held that night but he did not refer to that. He openly stated that he was there to get me to join them to get Mr. Fabricius out.

MR. WALTON: Now tell me sir, how did you know S.D.T.A. was going to have a meeting that night?

MR. FRAMPTON: We had been informed by bulletin.

MR. WALTON: I see. And do you know if Mr. Watts was going to be at that meeting.

MR. FRAMPTON: I didn't know he was going to be there, I assumed he would be.

MR. WALTON: Because he was on the grievance committee, was he not?

MR. FRAMPTON: He was a member of the S.D.T.A.

MR. WALTON: And you know that some of the matters that the S.D.T.A. would take up for consideration that night.

MR. FRAMPTON: That's right.

MR. WALTON: And therefore you assumed did you not that when he said you can come to our meeting, he was referring to that meeting.

MR. FRAMPTON: Mr. Watts did not say "Will you come to my meeting?"

MR. WALTON: Did he not ask you to join a group that evening?

MR. FRAMPTON: No he did not. He asked me to join the group to get Mr. Fabricius out.

MR. WALTON: He didn't indicate when this group was meeting.

MR. FRAMPTON: He did not.

MR. WALTON; I See) And you didn't connect him up with that group at that time.

MR. FRAMPTON: Not with the S.D.T.A. at that time. Certainly not, he didn't even mention it.

MR. WALTON: It's possible as matter of fact that he was referring to the S.D.T.A. isn't it?

MR. FRAMPTON: He made one reference. He said "of course you know the real issue is not the contracts of these teachers".

[18] MR. WALTON:—You say he made one reference - one reference to what?

MR. FRAMPTON: One reference to the teachers and not to the meeting of the S.D.T.A. That he didn't mention to us at all.

MR. WALTON: It's possible in fact that's what he was referring to, is it not?

MR. FRAMPTON: No, he was referring to the non-retention of the teachers, not to any meeting.

MR. WALTON: But the S.D.T.A. as a group was concerned with the non-retention of these two teachers was it not?

MR. FRAMPTON: Yes they were.

MR. WALTON: Did you go to the meeting that night?

MR. FRAMPTON: I did.

MR. WALTON: Was that one of the matters that came up for consideration?

MR. FRAMPTON: It was. I might further say too that it was voted down and the minority left in high tension when it was.

MR. WALTON: Yes, it was that night, was it not that it was put to a vote whether or not the S.D.T.A. should pur-

sue the matter as to the legality of the non-retention of those teacher.

MR. FRAMPTON: No it was put to a vote as to whether the S.D.T.A. should continue further pursuance of backing these teachers or not.

MR. WALTON: The vote was 12 to 11 against it.

MR. FRAMPTON: Yes.

MR. WALTON: And you voted against it I presume.

MR. FRAMPTON: I did.

MR. WALTON: And Mrs. Frampton?

MR. FRAMPTON: I can't say about that.

MR. WALTON: Were you ever at any of the board meetings at which the board adopted any regulations as the regulations of the Seward School Board governing the teachers of the school system.

MR. FRAMPTON: I don't believe so. I didn't attend Board meetings.

MR. WALTON: You don't know of your own personal knowledge whether the board ever did adopt these regulations, do you?

MR. FRAMPTON: Except the regulations were given to me as adopted by the board.

MR. WALTON: Who handed them to you?

MR. FRAMPTON: Mr. Fabricious.

MR. WALTON: Who handed them to you?

MR. FRAMPTON: Mr. Fabricious.

[19] MR. WALTON: Did he then tell you that they had been adopted?

MR. FRAMPTON: It was printed right on the document.

MR. WALTON: And thereby you assumed that they were adopted? Correct?

MR. FRAMPTON: Yes.

MR. WALTON: Do you remember when he handed them to you?

MR. FRAMPTON: I can't remember the exact date.

MR. WALTON: There's nothing in these papers, is there, to indicate whether or not they were ever adopted, or if so,

when? Let the record show I am handing to the witness a copy of Exhibit 12.

MR. FRAMPTON: It states here originally prepared in 1958 and it's a natural presumption that the board adopted them at that time.

MR. WALTON: There's nothing in the pages or on the cover to indicate that they were in fact adopted by the Board, is there?

MR. FRAMPTON: I can't say that it specifically states except that the board would not compile a lot of rules like this and not expect them to be adopted. That would be foolish - you know it as well as I.

MR. WALTON: No other questions.

MR. BURR: No other questions?

MR. WALTON: No.

MR. BURR: I just have one question, perhaps two to redirect to Mr. Frampton. You stated under cross examination that Mr. Watts was a member of the Grievance Committee of this S.D.T.A., whatever that is. What is the S.D.T.A.?

MR. FRAMPTON: That's the Seward District Teachers Association.

MR. BURR: Was that group comprised exclusively of Seward school teachers?

MR. FRAMPTON: It was comprised of teachers of the Seward system and the surrounding district.

MR. BURR: Was that affiliated with or connected with in any manner the American Federation of Teachers to your knowledge.

MR. FRAMPTON: No it was not.

MR. BURR: Now when you were discussing this matter with Mr. Watts on the morning in question in the spring of 1959 concerning his statements "that they were going to get rid of Mr. Fabricous," would you consider a statement by Mr. Watts to that effect which would appear to be premeditated and clandestine and calculated plan to undermine and oust the superintendent of the public schools for whom you and Mr. Watts were then employed. Would you

consider that to be within the scope of the responsibilities of Mr. Watts as a member of, or perhaps in charge of the grievance committee.

MR. FRAMPTON: No I would not consider it.

[20] MR. BURR: I have no other questions.

MR. WALTON: No other questions.

MR. BURR: No other questions. We'll call Mrs. Frampton then.

(Will you raise your right hand please. Do you swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God.)

MRS. FRAMPTON: I do.

MR. BURR: Will you state your full name for the record?

MRS. FRAMPTON: Margaret M. Frampton.

MR. BURR: Mrs. Frampton, you are a member of the Seward public school system.

MRS. FRAMPTON: I am.

MR. BURR: And you have been a teacher for how many years.

MRS. FRAMPTON: Twelve years.

MR. BURR: And how many of the twelve years have been spent in the Seward public schools, approximately.

MRS. FRAMPTON: I think it's seven in the Seward public schools.

MR. BURR: In what capacity are you presently employed?

MRS. FRAMPTON: First grade teacher.

MR. BURR: And have you been so employed for the past several years.

MRS. FRAMPTON: Approximately eleven years.

MR. BURR: Mrs. Frampton, do you know the individuals identified perviously, Mr. Watts and Mr. Blue.

MRS. FRAMPTON: I do.

MR. BURR: Will you indicate for the record by pointing toward these individuals.

MRS. FRAMPTON: (Pointing) Mr. Watts and Mr. Blue.

MR. BURR: Let the record indicate that the witness apparently identified correctly the two individuals at this hear-

ing. Mrs. Frampton, you heard the testimony of your husband, Mr. Frampton, earlier, considering the conversation in the spring of 1959. Have you?

MRS. FRAMPTON: That's right.

MR. BURR: I would ask you at this time whether or not you have any independent recollection of such conversation.

MRS. FRAMPTON: I certainly do.

[21] MR. BURR: Would you for the record state your recollection of the conversation that took place in your presence.

MRS. FRAMPTON: Well, Mr. Watts and Mr. Frampton came into my room that morning and Mr. Watts said that he would like for us to join with the group and asked us if we would, to get rid of Mr. Fabricious. He said, he knew, he realized that I was only concerned in this because my husband was principal. I don't know when I gave up my rights as a citizen and a teacher just because my husband was a principal. He also asked that we would go along with them. I said certainly not. I asked, what has Mr. Fabricious done to deserve such a thing as this? He didn't come up with any answer.

MR. BURR: At the time in question, Mrs. Frampton, did you know whether or not Mr. Watts had any official capacity in the organization previously identified as the teacher's group.

MRS. FRAMPTON: You mean, in the Seward District Teacher's Association?

MR. BURR: Yes.

MRS. FRAMPTON: I knew he was a member.

MR. BURR: Did you know whether or not he had any capacity as grievance chairman, or any such title as that?

MRS. ERAMPTON: Yes I knew he was on the committee to meet with the school board.

MR. BURR: Well, knowing that he was in charge of the grievance committee of that group, can you tell me whether or not you were surprised at the position that he would urge that you would oust the principal.

MRS. FRAMPTON: I was completely shocked, yes.

MR. BURR: Would you consider that to have been one of his normally prescribed duties as a grievance chairman.

MRS. FRAMPTON: Not when he was appointed to meet with the school board, no.

MR. BURR: In your eleven years of experience as a school teacher, Mrs. Frampton, have you ever heard of any school teacher sponsoring such a clandestine activity as outing the superintendant when there is a regulation prescribing the manner of doing so.

MRS. FRAMPTON: Not personally, no.

MR. BURR: Mrs. Frampton were you familiar in the spring of 1959 with any regulations that the Seward School system had?

MRS. FRAMPTON: Yes.

MR. BURR: Have you ever had the occasion to consult these regulations.

MRS. FRAMPTON: I read them when they were handed to me.

MR. BURR: Do you recall when they were handed to you, approximately.

MRS. FRAMPTON: No, I couldn't say.

[22] MR. BURR: Well, do you recall whether or not as point of fact, it was before, do you recall whether it was before the conversation took place with Mr. Watts.

MRS. FRAMPTON: Definitely, yes, it was before that.

MR. BURR: Do you know whether or not it was a duty on the part of the school teachers in the Seward public schools to be familiar with any applicable regulations.

MRS. FRAMPTON: It was our duty yes.

MR. BURR: And was Mr. Watts a teacher at the time in question?

MRS. FRAMPTON: Yes.

MR. BURR: I have no other questions.

MR. WALTON: No question. I feel that both counsel are being extremely cooperative in answering leading questions.

MR. BURR: The next witness will be. The next wit-

ness for the board will be Monty Richardson who is a teacher in the Seward Public Schools at the present time and for the record I should like to make this comment that Mr. Richardson was not previously requested to appear and he has done so only at the specific request of myself representing the board. He did not volunteer the testimony in any way, shape or form, so with that comment I'll call Mr. Richardson to the stand.

(Will you raise your right hand, sir. Do you swear the testimony you are about to give is nothing but the truth, the whole truth, so help you God.)

MR. RICHARDSON: I do.

MR. BURR: State your full name.

MR. RICHARDSON: Monty N. Richardson.

MR. BURR: Your occupation.

MR. RICHARDSON: School teacher in the Seward public schools.

MR. BURR: Do you know the respondents, the appelants in this case, Mr. Blue and Mr. Watts?

MR. RICHARDSON: I do.

MR. BURR: Will you identify them for the record.

MR. RICHARDSON: Mr. Watts and Mr. Blue.

MR. BURR: Let the record indicate the witness has apparently identified accurately the two appellants. Are you presently employed with the Seward school system.

MR. RICHARDSON: I am.

MR. BURR: In what capacity?

MR. RICHARDSON: I'm Social Studies teacher in the 7th and 8th grade.

MR. BURR: How many years have you been a school teacher?

MR. RICHARDSON: Eight years.

[23] MR. BURR: And how long have you been employed in the Seward public schools?

MR. RICHARDSON: This is my fourth year.

MR. BURR: I would like to direct your attention to the year 1959, Mr. Richardson, and specifically the spring of 1959, and ask you whether or not you were a member of

the teachers group which has been previously mentioned earlier in this hearing?

MR. RICHARDSON: You mean the Seward District Teacher's Association.

MR. BURR: Yes, does that go by shorter nomenclature?

MR. RICHARDSON: No, that's the Seward District Teacher's Association. The S.D.T.A.

MR. BURR: Were you in the spring of 1959 a member of that group?

MR. RICHARDSON: Yes sir.

MR. BURR: Do you know whether or not Mr. Watts was also a member of that group?

MR. RICHARDSON: He was.

MR. BURR: And Mr. Blue?

MR. RICHARDSON: He was.

MR. BURR: Do you recall whether or not Mr. Watts, in the spring of 1959, had an official capacity in that group?

MR. RICHARDSON: Mr. Watts was placed on the civic and public relations committee to meet with the board on the action pertaining to the non-retention of teachers.

MR. BURR: Do you have any knowledge of any effort or any plans or any scheme or device of that group to oust Mr. Fabricious in 1959.

MR. RICHARDSON: I do not.

MR. BURR: Did you hear any comment made by Mr. Watts to that effect.

MR. RICHARDSON: In his capacity as a representative of the Seward District Teachers Association, he certainly did not represent it.

MR. BURR: Did he ever represent that as an individual, Mr. Richardson, in your presence or as an individual.

MR. RICHARDSON: I would say it was probably mentioned.

MR. BURR: Did Mr. Watts ever solicit your cooperation or your participation in such a thing in the spring of 1959?

MR. RICHARDSON: My participation in ousting the superintendent?

MR. BURR: Yes.

MR. RICHARDSON: As a direct statement in soliciting me to oust the superintendent, I don't recall that he did.

MR. BURR: Well, let me put it a different way. Did he ever suggest to you in your presence that you either cooperate with, or participate in or lend assistance to any plan device, scheme, or otherwise, the objective of which was to remove [24] Mr. Fabricious as Superintendent of the Seward Public Schools.

MR. RICHARDSON: There were certain overtones during the spring of 1959.

MR. BURR: By Mr. Watts?

MR. RICHARDSON: Yes sir.

MR. BURR: Thank you. Now, would you consider those overtones to be within the scope of his responsibilities as a member of the grievance committee of the S.D.T.A.

MR. RICHARDSON: No sir.

MR. BURR: Thank you. I have no other questions.

MR. WALTON: Mr. Richardson, what was your connection with the S.D.T.A. in March, 1959?

MR. RICHARDSON: I was president of the association.

MR. WALTON: And the Public Relations Committees was also known as the Grievance Committee, was it not?

MR. RICHARDSON: We didn't have it listed as a Grievance Committee. I believe it was under the title Civic and Public Relations Committee.

MR. WALTON: It was also known as the Grievance Committee.

MR. RICHARDSON: Well, unofficially we called it the Grievance Committee.

MR. WALTON: Do you remember who also was on the Grievance Committee.

MR. RICHARDSON; I think perhaps I do. I believe Mr. Swick was on that, I think Mrs. Winninghoff, and I believe Mrs. Copeland.

MR. WALTON: And did you appoint those members to that committee?

MR. RICHARDSON: I did.

MR. WALTON: Why did you create this Public Relations or Grievance Committee?

MR. RICHARDSON: It went back to the non-retention of three teachers who had appealed to the Seward District Teachers Association because their non-retention had not been in accordance with the Alaska statutes in giving a bill of particulars. We entered their case and did what we could and appointed these members as a public realtions committee to go to the board and appraise them of the situation that they had not acted in compliance of the law in the non-retention of these two teachers.

MR. WALTON: Were those teachers Hallenbuck, Svedlund, Armstrong?

MR. RICHARDSON: That's right.

MR. WALTON: What about Brown?

MR. RICHARDSON: Mr. Brown was not included in that because I do not think he contested his case. I know little about that.

[25] MR. WALTON: I take it then that you were sympathetic with the efforts to assist those three deposed teachers?

MR. RICHARDSON: As far as the law was concerned, I certainly was.

MR. WALTON: You felt that they had been wrongfully dealt with?

MR. RICHARDSON: As far as the manner of discharge in not complying with the law I didn't think it was done in the correct fashion.

MR. WALTON: And subsequently the S.D.T.A. was represented by Mr. Watts at a meeting with the School Board, was it not?

MR. RICHARDSON: That's correct.

MR. WALTON: And the meeting would have been on or about March 31st, would it not?

MR. RICHARDSON: I think so - I don't have the date, not knowing until an hour ago that I was to appear, I don't have any dates with me but I think it was the latter part of March.

MR. WALTON: I take it that the committee was appointed by you about a week earlier.

MR. RICHARDSON: Pardon.

MR. WALTON: The committee was appointed by you about March 23rd.

MR. RICHARDSON: Yes sir.

MR. WALTON: Would that agree with the approximate date? 1959?

MR. RICHARDSON: Well it would be an approximate date that it was appointed. Yes sir.

MR. WALTON: Now after this appointment and designation of a public relations or grievance committee, did you have any response from Mr. Fabricious concerning the same?

MR. RICHARDSON: We had a response from the Board.

MR. WALTON: Well, let's put it this way. Did Mr. Fabricious come to you directly on March 23rd, 1959 in the Grade School building in the upper hall and discuss this matter with you?

MR. RICHARDSON: We discussed the matter sometime in the latter part of March - I don't know the exact date.

MR. WALTON: On or about the same date you appointed the committee did he not approach you?

MR. RICHARDSON: On that day I would say approximately, he spoke with me.

MR. WALTON: And he spoke with you privately, didn't he?

MR. RICHARDSON: Yes sir.

MR. WALTON: There was no group meeting, just a private meeting upstairs.

MR. RICHARDSON: That's correct.

[26] MR. WALTON: One might even call it clandestine?

MR. RICHARDSON: Well with about 75 students watching it was hardly clandestine.

MR. WALTON: And what was it that Mr. Fabricious said to you sir?

MR. RICHARDSON: Well, I don't have the exact state-

ments that Mr. Fabricious made to me but he did want to know what was going on and what we appointed a committee for.

MR. WALTON: He was pretty upset wasn't he?

MR. RICHARDSON: He wasn't in the happiest frame of mind.

MR. WALTON: He was angry wasn't he?

MR. RICHARDSON: He wasn't in the happiest frame of mind.

MR. WALTON: Will you answer the question - was he angry?

MR. RICHARDSON: What constitutes anger?

MR. WALTON: I'll let you answer that question.

MR. RICHARDSON: I can ask you questions too.

MR. WALTON: No you can't - you answer the questions as I ask them.

MR. BURR: I object to your arguing with the witness.

MR. WALTON: The witness is arguing with me. I intend to ask the questions and I demand an answer. Was he angry?

MR. BURR: You can't demand anything of this witness, Mr. Walton.

MR. WALTON: I disagree I think I can, on behalf of these appellants I can demand that this witness answer the question and I do. Was he angry?

MR. RICHARDSON: He was unhappy.

MR. WALTON: Was he angry - yes or no?

MR. BURR: I would tell the witness that he doesn't have to answer categerically answer that question in a yes or no manner. If you want to explain and use your own method of testifying you are at liberty to do so in spite of what the instructions from the other side are.

MR. RICHARDSON: I'd say that the conversation between Mr. Fabricious and myself on that particular day was not of the most pleasant type and we have had more pleasant conversations in the past other than that one and I don't look back on it as a pleasant conversation.

MR. WALTON: Do you remember him saying these words "Richardson, you are stirring up all this damn trouble"

MR. RICHARDSON: No sir, I don't.

[27] MR. WALTON: Do you remember him saying anything similar?

MR. RICHARDSON: Not in swear words, no.

MR. WALTON: Let's delete swear words then.

MR. RICHARDSON: I think it's a good idea.

MR. WALTON: Then did he? Incidentally, have you ever heard Mr. Fabricious swear during school hours, Mr. Richardson?

MR. RICHARDSON: Not to my recollection.

MR. WALTON: I am going to request that it would be confusing if Mr. Fabricious carries on a monologue while the witness is answering questions and request that Mr. Fabricious wait until his turn to testify comes.

So the answer to my question is no - you don't remember any.

MR. RICHARDSON: Well not in the presence of students, certainly.

MR. WALTON: Well, then not in the presence of students. Do you ever remember hearing Mr. Fabricious use profane language in school hours on school premises?

MR. RICHARDSON: I would say that at certain times, and again I emphasize not in the presence of students, that he might have dropped a few slang words here or there.

MR. WALTON: I said swear words.

MR. RICHARDSON: I say slang words.

MR. WALTON: Then the answer would be no he never used swear words in your presence?

MR. RICHARDSON: I still say that he just dropped a few slang words.

MR. WALTON: Mr. Casey I am going to ask that this witness answer questions. It is a simple question. The question is simply this. Have you sir ever heard Mr. Fabricious use swear words, profane words on school premises in school hours?

MR. BURR: I am going to the question that it's wholly immaterial, irrelvant. Mr. Fabricious is not on trial and I'll interpose this objection to the whole line of testimony.

MR. WALTON: Oh, very well, then we are going to suddenly not become charitable to each other's questions. I'm perfectly willing Mr. Burr to let all the facts come out - that's what the State Board wants and I'm sure that's what this Board wants.

MR. BURR: This hearing is not designed to try the Supt. of the schools of Seward and I'm going to object to any effort to intimidate this witness into making statements concerning anything that Mr. Fabricious said unless it bears directly on Mr. Blue or Mr. Watts.

MR. WALTON: I resent your remark that I'm trying to intimidate the witness. Because I don't think that I am.

[28] MR. BURR: Let me amend to suggestive statements, extract suggestive statements from the witness with that correction I'll let the objection stand.

MR. WALTON: Please rule Mr. Casey. Should the question not to be answered?

MR. CASEY: I don't think Mr. Richardson has to answer that question unless he so desires and I would say you are overruled Mr. Walton.

MR. WALTON: May I inquire of the chairman is the chair's position that witnesses need not answer questions if they do not desire to do so?

MR. CASEY: Well, to a certain point Mr. Walton you go quite far sometimes in trying to force a witness and he was willing up to a point and I think we should get all the testimony that we need but if you are going to tell him what to say and how to answer it, no I don't think he has to.

MR. WALTON: Then you object to the question, is that it; I won't argue with the chairman. No other questions.

MR. BURR: Just one further question. Mr. Richardson I would like to hand you Exhibit 12 and ask you if you can identify that document please - call for identification.

MR. RICHARDSON: I think so.

MR. BURR: I direct your attention to the third page of Exhibit 12 and subparagraph 7, as I recall. Have you ever

seen or are you familiar with that particular portion of regulations.

MR. RICHARDSON: Oh yes, I read it.

MR. BURR: And had you read that portion of the regulations prior to the spring of 1959?

MR. RICHARDSON: Yes.

MR. BURR: I have no other questions. Thank you Mr. Richardson.

(Next witness will be Mr. Blue. Do you swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God.)

MR. BLUE: I do.

MR. BURR: Have a seat please? Will you state your full name please.

MR. BLUE: Walter B. Blue.

MR. BURR: You are the same Walter B. Blue that is a respondent or an appellant on trial in the present hearing before the Seward School Board.

MR. BLUE: Yes sir.

MR. BURR: Mr. Blue did you receive a letter identified as a bill of particulars and also a notice of non-retention from the Seward School Board previously identified in this hearing as Exhibit 1 of the board. I will hand you Exhibit 1 and have you identify it. Did you answer yes?

MR. BLUE: Yes.

MR. BURR: Now, Mr. Blue in the spring of 1959 were you an employee or school teacher of the public school system?

[29] MR. BLUE: Yes sir.

MR. BURR: How long prior to that time had you been a school teacher?

MR. BLUE: About 15 years.

MR. BURR: With the Seward school system approximately how long?

MR. BLUE: Fifteen years.

MR. BURR: With the Seward school system?

MR. BLUE: Yes sir.

MR. BURR: And in what capacity?

MR. BLUE: I was a instructor in the High School.

MR. BURR: Had you held that position continuously for these years?

MR. BLUE: Yes sir.

MR. BURR: Had you ever held a position higher than a school teacher with the system.

MR. BLUE: No sir. Let me qualify that sir. I once received a telegram which gave me a title that I had never been officially apprised of as a matter of temporary experience, but actually I had no other position.

MR. BURR: But you've never been a principal of schools?

MR. BLUE: No sir.

MR. BURR: What is your specialty in the school system?

MR. BLUE: Social sciences.

MR. BURR: Have you taught that continuously for 14 years?

MR. BLUE: Yes sir.

MR. BURR: What is your educational background Mr. Blue?

MR. BLUE: Bachelor of Arts from Washington State University, and I don't remember how many graduate hours since that time in various subjects.

MR. BURR: You don't recall how many graduate hours?

MR. BLUE: No sir.

MR. BURR: You have a Bachelor's degree only?

MR. BLUE: Yes sir.

MR. BURR: You've never taken, never completed the requirements for a Master's degree?

MR. BLUE: No sir, started them.

[30] MR. BURR: Pardon.

MR. BLUE: Started them only, haven't finished them.

MR. BURR: Then in 14 years of teaching you are still a Bachelor of Science.

MR. BLUE: Yes. No, Arts, I beg your pardon.

MR. BURR: Now, Mr. Blue in the spring of 1959 were you a member of the organization previously identified as the Seward District Teacher's Association.

MR. BLUE: Yes sir.

MR. BURR: And how long had you been a member of of that organization.

MR. BLUE: I was a charter member - from the time of its inception.

MR. BURR: Do you know whether or not in the spring of 1959 Mr. Watts had any official capacity in that group?

MR. BLUE: Yes sir.

MR. BURR: Will you tell me what that was if you know.

MR. BLUE: He was a member of the board of that group and from the testimony here I recall he was a member of the grievance committee.

MR. BURR: Is that your knowledge or is that second hand?

MR. BLUE: I think I know it of my own knowledge.

MR. BURR: Did you have any official capacity in this group Mr. Blue?

MR. BLUE: Yes, I did, I think it was called Member-at-Large of the Executive Board, or something like that.

MR. BURR: A member at large of the Executive Board?

MR. BLUE: I believe that is what the title was.

MR. BURR: How long had that organization been in effect as of 1959?

MR. BLUE: I don't recall. 5 or 6 years I think.

MR. BURR: And had you held any official positions with that group since its inception other than being a charter member.

MR. BLUE: Not that I recall.

MR. BURR: Will you tell me whether or not there had been a greivance committee in existence for the entire period of this group. The essence of the group.

MR. BLUE: Including 1959.

MR. BURR: Yes.

MR. BLUE: Yes, in the year 1959 there was.

[31] MR. BURR: Was there a period of a number of years prior to that there was no grievance committee.

MR. BLUE: I don't recall one.

MR. BURR: What was one of the original purposes of the organization of this group? Being a charter member I'm assuming that you are aware of it.

MR. BLUE: Well, it had its social aspects, I suppose that general educational study, welfare of teachers, and so forth, were elements of its, were some of its objectives.

MR. BURR: Would you say that it was primarily a social group?

MR. BLUE: Oh, perhaps, half social, half official.

MR. BURR: What official capacity did this group have with the Seward Public school system.

MR. BLUE: It was not a part of Seward Public School System - it was simply a local organization of teachers.

MR. BURR: Was this group incorporated?

MR. BLUE: No sir.

MR. BURR: Was it a non-incorporated association?

MR. BLUE: Well, let me qualify that statement. It was an ultimate and branch of a NEA complex.

MR. BURR: NEA complex. What's that?

MR. BLUE: The National Education Association was the parent group, there was the state group and then finally coming down to the local group which was the SDTA was formed.

MR. BURR: Let me rephrase my, or let me restate my original question now, did it have in the spring of 1959, have any official liaison with the Seward Public School system?

MR. BLUE: Prior to 1959?

MR. BURR: Prior to or subsequent to.

MR. BLUE: I believe it did. Yes sir.

MR. BURR: Will you tell me what official relationship it had with the Seward Public Schools.

MR. BLUE: It seems to me that it negotiated with the School Board over a matter of a rise in salary sometime previous, I don't remember the year.

MR. BURR: Would this have been an informal solicitation of the support of the Board for an increase in Salary distinguished from an official request from this group.

MR. BLUE: I should say mostly informal.

[32] MR. BURR: So if you were to compare the activities with a group such as the American Federation of Teachers, you would categorize it as being one with informality rather than formality.

MR. BLUE: I believe so.

MR. BURR: So, being an informal organization, would it not be true that this organization had no official liaison or relationship with the Seward Public School System?

MR. BLUE: Probably so.

MR. BURR: Will you tell me what official connection it had with the Seward Public School System as such?

MR. BLUE: I perhaps cannot answer that question.

MR. BURR: You are and were a charter member of this group are you not and were you not?

MR. BLUE: Yes sir.

MR. BURR: Will you tell me being a charter member and being certainly presumed to be familiar with what this group and is, will you tell me whether or not, and if so, in what capacity this group had any official liaison with the Seward Public School System?

MR. BLUE: On occasion it had its meetings in the school building as the meetings were sometimes social in character, sometimes for the purpose of general discussion on the matter of teacher welfare, or educational problems.

MR. BURR: Is it, was it during the spring of 1959 the only teachers group in existence in Seward to your knowledge.

MR. BLUE: When does the spring begin and end?

MR. BURR: For the purpose of this discussion I'll say the first of the year is the commencement of spring.

MR. BLUE: As far as I know at the first of the year it was the only organization or group.

MR. BURR: There was no active group of the American Federation of Teachers in Seward?

MR. BLUE: No sir.

MR. BURR: Is there now?

MR. BLUE: Yes sir.

MR. BURR: Are you a member of such group?
MR. BLUE: I am.
MR. BURR: Does this previous group still exist?
MR. BLUE: The S.D.T.A.?
MR. BURR: Yes.
[33] MR. BLUE: As far as I know it does.
MR. BURR: As a charter member of this group and being a member of in the spring of 1959, Mr. Blue, will you tell me as to whether or not that group had any license, or any express authority, now wait a minute, had any implied or express authority as a group to take any action of any type, nature, or description to oust, and I use the word oust, the superintendent of public schools, Mr. Fabricious?
MR. BLUE: Not that I know of.
MR. BURR: And if this group took any such action or devised or caculated any such plan, would you say it was wholly without authority.
MR. BLUE: Yes sir.
MR. BURR: Now what you are telling me is that Mr. Watts, your constituent in this organization, was acting without authority, when he solicited the cooperation of your fellow school teachers to oust Mr. Fabricious.
MR. WALTON: Now I wish to object. This is really an unfair question. He has not testified to any and Mr. Burr knows very well and I think Mr. Burr knows better.
MR. BURR: Do you understand the question?
MR. BLUE: I understand the question.
MR. BURR: Will you answer please?
MR. BLUE: No sir I cannot testify for what Mr. Watts did.
MR. BURR: You know Mr. Watts to have been a member of the grievance committee in the spring of 1959?
MR. BLUE: Yes sir.
MR. BURR: Well, would you say that as a member of the grievance committee Mr. Watts was acting on the behalf of the Seward District Teachers Association?
MR. BLUE: When sir?
MR. BURR: In the spring of 1959.

MR. BLUE: In what connection?

MR. BURR: Well, I'm talking of at the time that he had the conversation with the two Framptons, Mr. and Mrs. Frampton.

MR. BLUE: I didn't know about that.

MR. BURR: Well, were you a member of the group at that time?

MR. BLUE: I was.

MR. BURR: Were you familiar with the capacity of Mr. Watts at that time as being a member of the grievance committee?

MR. BLUE: Yes sir.

[34] MR. BURR: If Mr. Watts as a member of that grievance committee solicited the cooperation of fellow school teachers to oust the superintendent, in your opinion would it have been an authorized function of your group?

MR. BLUE: It would not have been an authorized function.

MR. BURR: Thank you. Can I have Exhibit 7. I should like to hand you exhibit 7 for identification, Mr. Blue, and ask you if you can identify it.

MR. BLUE: Yes sir, I can.

MR. BURR: Was your answer yes?

MR. BLUE: Yes sir.

MR. BURR: Have you ever seen such a document as that before tonight?

MR. BLUE: Yes sir.

MR. BURR: Will you tell me whether or not you are one of the authors of this document?

MR. BLUE: To the extent that I am a member of the American Federation of Teachers and it was authorized by that group, yes.

MR. BURR: And it was what?

MR. BLUE: To the extent that it was authorized by the American Federation of Teachers and to the extent that I am a member of that group, yes.

MR. BURR: Are you telling me that the American Federation of Teachers drafted this document?

MR. BLUE: I am.

MR. BURR: And will you tell me who in the American Federation of Teachers is the author of this document, or do you know?

MR. BLUE: It was a fairly large group comprised of approximately two-thirds of the teaching staff and it was a long time ago that this was drafted, I don't believe I recall just who all was involved in the writing of it.

MR. BURR: Did you contribute any portion of this document?

MR. BLUE: Yes, I did sir.

MR. BURR: Did Mr. Watts contribute any portion of it, do you know?

MR. BLUE: I think so.

MR. BURR: Well, do you know as a matter of fact, whether he did or didn't?

MR. BLUE: I don't recall specifically, no.

MR. BURR: During the spring of 1959, did you have occasion to cause this document to be reproduced in Seward, Alaska.

MR. BLUE: I'm not certain I understand the meaning of the question.

[35] MR. BURR: By reproduce I mean make other copies of it.

MR. BLUE: Do you mean did I make other copies of it?

MR. BURR: Did you cause or having anything to do with the reproduction of this document?

MR. BLUE: Yes sir I was an officer of the American Federation of Teachers, I called the printing company, find out what the prices were and authorized them to print copies of it.

MR. BURR: Was the American Federation of Teachers an active organization in and about the city of Seward, Alaska, in the spring of 1959?

MR. BLUE: When is the spring?

MR. BURR: I'm making particular reference to the month of May.

MR. BLUE: Yes sir, I believe it was in the month

of May that the organization was formed. I believe it was organized in May.

MR. BURR: In 1959?

MR. BLUE: I believe so.

MR. BURR: Who was the first president of this group?

MR. BLUE: I was.

MR. BURR: And who was the secretary & treasurer?

MR. BLUE: I don't recall if we had a secretary-treasure. We had two separate men.

MR. BURR: How many members in your group at that time were Seward Public School Teachers?

MR. BLUE: I believe all of them were.

MR. BURR: What percentage of the members in this group, let me rephrase the question - what percentage if you know of the entire teaching staff of the Seward Public School system were members of your group?

MR. BLUE: Nearly all, approximately two-thirds.

MR. BURR: Two thirds of the number?

MR. BLUE: I beg your pardon - will you restate the question?

MR. BURR: What percentage of the entire teaching staff of the Seward Public Schools were members in May of 1959 of the American Federation of Teachers Local in Seward.

MR. BLUE: 18 people, which was approximately 64%.

MR. BURR: Sixty-four % of the teachers were members.

MR. BLUE: Yes.

MR. BURR: And this you are stating from your own personal knowledge?

[36] MR. BLUE: Yes sir.

MR. BURR: Would you say that the 64% membership was aware of and had a hand in the preparation of exhibit 7?

MR. BLUE: Yes sir.

MR. BURR: And did each, did all of the members of that Seward local have knowledge of this document prior to its republication - or reproduction?

MR. BLUE: The hesitation here is over the matter of dates.

MR. BURR: It bears the date of May 18, 1959.

MR. BLUE: That would be after school was out, so you understand that between school was dismissed in the spring teachers teachers began to disburse so that it may be that they were not all at Seward at that time.

MR. BURR: So you don't have any present recollection of how many or what percentage of your membership actually know of and was familiar with this document?

MR. BLUE: Yes sir - not more than two would have been gone by that time I should say.

MR. BURR: Not more than two were gone? Would you say that the balance of these people had first hand information of this document.

MR. BLUE: That's right - personal.

MR. BURR: Prior to it's reproduction?

MR. BLUE: That's my personal feeling sir.

MR. BURR: And you were president of the Seward local of the American Federation of Teachers?

MR. BLUE: Yes sir.

MR. BURR: Was it one of your responsibilities to authorize the dissemination of this document?

MR. BLUE: To what?

MR. BURR: Did you in your capacity as president of the local authorize the dissemination of this document, Exhibit 7?

MR. BLUE: No it was group action - it was done by a vote of the group.

MR. BURR: Pardon?

MR. BLUE: It was done by a vote of the group.

MR. BURR: At any particular meeting?

MR. BLUE: Yes sir.

MR. BURR: Do you recall the meeting?

MR. BLUE: I don't know if I can recall the precise date or not. The question would have to have been 1 or 2 days perhaps before the dates of publishing.

[37] MR. BURR: Did you, or did your organization keep minutes in the spring of 1959?

MR. BLUE: Yes sir.

MR. BURR: Do you have those minutes available?

MR. BLUE: I believe so, sir.

MR. BURR: Would you be willing to stipulate the admissibility of these minutes as an exhibit in this record?

MR. BLUE: Yes sir.

MR. BURR: Would you produce them and make them available when this record is printed?

MR. BLUE: I don't understand your question.

MR. BURR: The minutes of the meeting next preceeding May 18, 1959, of the American Federation of Teachers Local, whatever it is?

MR. BLUE: No. 1347.

MR. BURR: Would you be willing to stipulate that a copy of these minutes be made a part of this record?

MR. BLUE: Yes sir.

MR. BURR: Well, I should like to offer such an exhibit and have it identified adn marked as an exhibit in evidence. Exhibit 14.

MR. WALTON: Let me read first. I haven't actually read it myself. Mr. Burr, here's the original of the minutes of the meeting of May 17, AFT, in making them available we would like to have the original returned to us in order that copies may be sent with the record.

MR. BURR: No objections - I'll offer this exhibit as Exhibit 14 in evidence and request that the original be returned to some authorized representative of the local and that a copy thereof, a certified true copy thereof be appended as exhibit - exhibit 14.

MR. WALTON: Mr. Casey, may I please examine it if Mr. Burr does not wish to.

MR. BURR: I should request that the document not be marked.

MR. WALTON: I agree - I was just going to write the names Elbe, Campen, Hoogland.

MR. BURR: I notice those minutes are not signed - perhaps we could have the witness identify as being an accurate statement of the minutes. I should like to hand you Exhibit 14, Mr. Blue and ask you if you concede that to

be an original copy of the minutes of the local for the day in question?

MR. WALTON: May I interject - if you know.

MR. BURR: For the record, Mr. Walton, I should like to restate the answer of the witness that he has identified Exhibit 14 as being a copy, or the original of the minutes of the meeting of the Seward chapter of AFT held on May 17, 1959 at which 13 members were present.

[38] MR. BURR: Mr. Blue are you familiar with a document which is entitled Seward Public Schools School Board Regulations - a copy of which has been marked as Exhibit 12? Your answer is yes?

MR. BLUE: Yes.

MR. BURR: When did you first become familiar with this document?

MR. BLUE: I don't remember the publication date - I believe it was in 1958 perhaps 1959.

MR. BURR: I would like to direct your attention to paragraph 7 on page 3 and ask you whether or not you ever had occasion to read that document - that portion of it?

MR. BLUE: Yes mean this part that says any employee or group of employees may at any time appeal to the board.

MR. BURR: I'm making particular reference to the entire transcript, not a portion taken out of the context, Mr. Blue.

MR. BLUE: Or any grievances or complaints shall be submitted to

MR. BURR: Shall

MR. BLUE: The Superintendent and in addition any employee shall

MR. BURR: Yes - now were you familiar with that portion of this regulation in the spring of 1959?

MR. BLUE: Yes sir, I was.

MR. BURR: Will you tell me what if any official connection with or relation with the Seward Public Schools, the Seward Chapter of the AFT have in May, 1959.

MR. BLUE: What official relationship we had, if any?

MR. BURR: Yes.

MR. BLUE: That's a difficult question to answer because it seems like part of the time the Board recognized our existence as a group and part of the time it did not.

MR. BURR: Perhaps you didn't understand my question. Do you know of your own knowledge whether the Seward local of the AFT had any official recognition from the Seward Public Schools in May 1959?

MR. BLUE: Sometimes they answered our letters addressing us by our proper names.

MR. BURR: Did you consider the Seward local to be the bargaining representative of the School teachers in the Seward Public Schools.

MR. BLUE: That would be the ultimate objective of the organization - you understand it was a young group, at the time.

MR. BURR: Did you consider in May 1959 the Seward local, or the Seward chapter of the AFT to be in fact, the bargaining representative of the school teachers of the Seward Public School System?

[39] MR. BLUE: Not for all of them, for approximately 2/3 of them.

MR. BURR: And as a bargaining representative for approximately 2/3 of the school teachers, I should like to now ask you whether or not that authorization included the power on behalf of the group to sponsor or be a part of any plan, or device, or scheme or attempt to remove the superintendent of public schools?

MR. BLUE: No, that was not one of its objectives, no.

MR. BURR: Would that have been one of its authorized functions.

MR. BLUE: Oh, I suppose if there were reasons for it.

MR. BURR: Is there any doubt in your mind as to whether or not that group had such authorization in the spring of 1959 in the month of May, particularly?

MR. BLUE: You mean authorization to oust the superintendent?

MR. BURR: Yes.

MR. BLUE: No such authorization was ever assumed by that group, no.

MR. BURR: Did that group have the authority or the power to distribute information unfounded, unsupported information I might add, the objective of which was to remove the - I should like to complete my question Mr. Walton then you may object - the objective of which was to remove the superintendent of public schools?

MR. BLUE: May I have the question again?

MR. BURR: Will you read it back - I'll restate it - Did the Seward chapter of the AFT in the month of May, 1959 have any authority, express or implied as a group to sponsor or to be a part of any plan, or to distribute any information to the public of Seward, the purpose of which was to cause the removal of the superintendent of schools, George Fabricious?

MR. BLUE: No sir, it did not.

MR. BURR: Do you know whether or not that was one of the designed objectives of Exhibit 7, which you've identified?

MR. BLUE: To oust the superintendent?

MR. BURR: Yes.

MR. BLUE: I know that it was not the objective and it so states in my letter.

MR. BURR: Will you state whether or not this document was reproduced at your directions?

MR. BLUE: It was I who called the Kirkpatrick organization to get prices and soforth, and I was one of those who carried out this function of having it printed, representing the entire union, yes sir.

MR. BURR: Would you say then that it was at your direction that this document was reproduced?

MR. BLUE: No sir.

[40] MR. BURR: Did anybody else in your group to your knowledge give the authorization of the reproduction of this document, Exhibit 7?

MR. BLUE: The authorization if it was a group matter, it wasn't an individual matter, sir.

MR. BURR: Would you say by that that it was a motion that was passed on by the membership?

MR. BLUE: Yes sir.

MR. BURR: As a result of that action on the part of the American Federation of Teachers, Seward Local, would you state whether or not this document was in fact reproduced?

MR. BLUE: It was reproduced, yes sir.

MR. BURR: And would you state whether or not Mr. Watts had anything at all of an official nature to do with the reproducing of that document, Exhibit 7.

MR. BLUE: I believe he was a member of the committee that did some revising work on it.

MR. BURR: I'm not speaking of the revision - I'm talking of Exhibit 7. Mr. Blue do you know whether or not Mr. Blue had any connection with the reproduction of that document - I'm sorry, Mr. Watts.

MR. BLUE: Yes, virtually every member of the organization did in one way or another.

MR. BURR: Do you know whether or not Mr. Watts, in point of fact, carried this document or a similar copy of it to the Kirkpatrick firm in Seward and caused it to be reproduced in the approximate number of 500.

MR. BLUE: I know that he did not.

MR. BURR: Do you know whether or not anybody at his direction did.

MR. BLUE: Nobody at his direction did.

MR. BURR: Do you know whether or not this document was approximately reproduced?

MR. BLUE: Except sir as he was a voter of the group.

MR. BURR: Did you either you or Mr. Watts personally appear at the office of Mrs. Kirkpatrick?

MR. BLUE: I did yes sir - not Mr. Watts.

MR. BURR: And what was the purpose of your appearing at or about that time in Mrs. Kirkpatrick's office?

MR. BLUE: To take the draft to her for printing.

MR. BURR: Then it was you who carried this document to Mrs. Kirkpatrick?

MR. BLUE: I don't remember if it was I or another member along with me who carried it.

MR. WALTON: Mr. Burr we might be able to help you. I think we will be willing to stipulate to a lot of things along this area. If you'd like to ask me I think I can stipulate.

[41] MR. BURR: After this document was reproduced Mr. Blue, will you state whether or not you personally distributed this document in and about the city of Seward?

MR. BLUE: Personally distributed?

MR. BURR: Personally hand carried it or caused it to be hand carried to other members of the public at large in Seward?

MR. BLUE: I don't remember who did the mailing, sir.

MR. BURR: Is it possible that you did and don't recall?

MR. BLUE: It's possible, yes sir.

MR. BURR: Do you know whether or not Mr. Watts did? personally?

MR. BLUE: I don't recall. Yes sir, I beg your pardon, I do remember that he did.

MR. BURR: He did but you don't recall whether you did?

MR. BLUE: No sir.

MR. BURR: This has been a subject of some no small amount of controversy in the last year and a half, has it not?

MR. BLUE: It has - yes sir.

MR. BURR: But you don't have any recollection of whether or not you participated?

MR. BLUE: Oh, I participated in the drafting of it yes sir, I don't remember whether mechanically I carried it in distribution or not, - it's possible that I did.

MR. WALTON: Mr. Burr, I think I can help you here. Mr. Blue is not trying to be evasive, and I wouldn't want any misunderstanding to arise. Mr. Blue, can we stipulate that you participated in the distribution of the document?

MR. BLUE: Certainly.

MR. WALTON: Very well, we so stipulate - has been charged - admitted.

MR. BURR: Prior to the distribution of Exhibit 7 in and about Seward, Alaska, Mr. Blue, will you tell me whether or not of your own personal knowledge, there had been processed any grievances which would correspond to any or all of the items designated on exhibit 7 to the superintendent of public schools, Mr. Fabricious?

MR. BLUE: No sir, I think not.

MR. BURR: And if so, please identify which of these had been processed.

MR. BLUE: I remember one had. I believe that item no. 3 had.

MR. BURR: You believe?

MR. BLUE: Yes sir.

MR. BURR: Well, is there some question in your mind about it?

MR. BLUE: No sir, except that I had it from testimony of other people therefore [42] I believe it.

MR. BURR: Well, do you know of your own personal knowledge whether it had been or had not been?

MR. BLUE: You said processed sir, now what do you mean by processing fabrics?

MR. BURR: Let me, so that there will be no misunderstanding, let me rephrase it. How many of the items on the bill of particulars of exhibit 7 of your own personal knowledge had been communicated directly to George Fabricious in his capacity as superintendent of public schools of Seward prior to the distribution of that document in Seward?

MR. BLUE: Number 1, number 3, number 4, number 5 wouldn't be a matter of communication, it would hardly fit your question, number 6 of course involved Mr. Fabricious himself and he would know about that, I wasn't there, number 8 of course Mr. Fabricious was involved and I was a witness to, number 9 was outside of my own purview, I know of it from other people, b of number 9, I don't know if it had been communicated to him or not.

MR. BURR: Number 9 was that?

MR. BLUE: 3 of number 9.

MR. BURR: You don't know if that was communicated?

MR. BLUE: To him, or not, previously, no sir I don't.

MR. BURR: But in spite of this lack of knowledge you still participated in the distribution of exhibit 7.

MR. BLUE: Well, the point you seem to be getting at is the radius of number 7 in the element.

MR. BURR: I'm not getting at anything - just want you to answer my question.

MR. BLUE: Will you restate it please?

MR. BURR: Do you have that question? In spite of your lack of knowledge of the fact that this was not brought to the attention of Mr. Fabricious, particularly the reference I'm making to the 9b of exhibit 7, in spite of your lack of knowledge in this having been brought to Mr. Fabricious' attention, is it your testimony that you did in fact cause the distribution of this document in Seward.

MR. BLUE: Yes, a copy of this was sent to him on the day of distribution.

MR. BURR: You haven't answered my question, Mr. Blue. In spite of your lack of knowledge personally that this had been previously brought to Mr. Fabricious' attention?

MR. BLUE: I don't know what all was brought to Mr. Fabricious' attention.

MR. BURR: You indicated that you lacked personal knowledge that this was brought to his attention.

MR. BLUE: I have indicated that some things I knew were brought to his attention. I can't say as to all of them whether or not they were brought to his attention.

[43] MR. BURR: So there are some of the items on Exhibit 7 that you lacked knowledge in point of fact whether these were brought to the attention of Mr. Fabricious?

MR. BLUE: You understand that some of these are as you stated in qualifying terms and it's very difficult to answer a question like that. The word apparently, for example, how do I know?

MR. BURR: Let me rephrase it - perhaps I'm making it too difficult for you. Would you consider all of the items in Exhibit 7 to be in the nature of a complaint, grievances, or whatever you choose to designate them as?

MR. BLUE: Do you mean all of the enumerated ones?

MR. BURR: I mean everything on exhibit 7.

MR. BLUE: I believe it may be simplified by saying that.

MR. BURR: I don't want you to cimplify any question and I want you to answer it.

MR. BLUE: Will you repeat the question please?

MR. BURR: Do you have that question?

RECORDER: Would you consider all of the items on exhibit 7 to be in the nature of complaints or grievances - I mean all of the items.

MR. BLUE: Certainly, every statement is certainly not a complaint or grievance, for example, at this time, material stated here as having been upheld, that's not a grievance or complaint.

MR. BURR: What item are you referring to sir.

MR. WALTON: Fourth paragraph on bottom of page 2.

MR. BLUE: That's neither a complaint or a grievance. And I'm sure that on the last page you will find some material that does not fall in this category.

MR. BURR: I notice items number 1 through 10, Mr. Blue, in Exhibit 7. Will you tell me whether or not all ten of the items so designated constituted grievances against Mr. Fabricious - or whether any of them so constituted?

MR. BLUE: Yes sir, they appear to be grievances that could be attributed to Mr. Fabricious or his actions.

MR. BURR: Would you say then that for the record that in your opinion all of the 10 items on exhibit 7 were meant to be a recitation of bona fide grievances of your group as of May 1959, against Mr. Fabricious individually, or against the Seward School system generally?

MR. BLUE: The open letter addressed to the board I believe that it states grievances, generally having to do with situations in the school system, I would say that most of

them generated from the policies or actions that Mr. Fabricious carreid out.

MR. BURR: I notice that the letter bears the date of, that exhibit 7 bears the date of May 18, 1959. Is that the correct date that this was prepared to your knowledge?

MR. BLUE: As far as I know it is.

[44] MR. BURR: Can you tell me when it was distributed or delivered to the Seward Public School Board - the public school board?

MR. BLUE: I might be one day off - this was prepared in the evening and was distributed the following morning, now whether the date was the date of the following day, the day of actual distribution, or actual day of preparation, I don't recall. I think proabbly it was the day of preparation.

MR. BURR: How was it delivered to the Seward School Board?

MR. BLUE: I believe Mr. Watts carried copies to the members.

MR. BURR: Did he hand carry them?

MR. BLUE: I believe so.

MR. BURR: And was he at the same time delivering copies of this document to members of the public at large in Seward?

MR. BLUE: To the extent that they were put in the mail.

MR. BURR: You did put copies in the mail to people in and about Seward.

MR. BLUE: Yes sir. They were for public distribution.

MR. BURR: At or about the same time that you delivered copies to the Seward Public School Board. So, if I understand your testimony correctly that you were distributing Exhibit 7 to the public at large in Seward before the Seward Public School Board even had a chance to meet and decide the validity of any or all of the grievances that you outlined.

MR. BLUE: No sir. We had attempted to get the information to the school board, it was rather fitting to get it in there, but had been unable to do so. For this way was the

final result of getting the information to the school board after attempts to communicate with them had fallen down.

MR. BURR: But in point of fact, written communication to the board, there was hardly time for the board to have taken action on this open letter as you call it, prior to the distribution of this document in and about the town of Seward.

MR. BLUE: That's right - you see this was contingent.

MR. BURR: Was "that's right," your answer?

MR. BLUE: I said that's right, yes.

MR. BURR: Thank you.

MR. BLUE: This action was contingent upon not being able to communicate with them before.

MR. BURR: So this being the first written compilation of grievances that you distributed to the school board on or about the 18th of May?

MR. BLUE: Not quite sir. Compilation - now perhaps compilation, there had been previous communication, there had been a number of attempts to communicate with the board.

[45] MR. BURR: Had there been previous written grievances as such?

MR. BLUE: I think in the nature of an invitation to discuss it grievances.

MR. BURR: Had there been previous written grievances as such communicated with the Board by your group?

MR. BLUE: I believe so.

MR. BURR: Do you have copies of such documents?

MR. WALTON: May I inquire if that includes letters, Mr. Burr?

MR. BURR: I'm talking about grievances, in the nature of grievances, anything in the nature of grievances.

MR. BLUE: You understand that it's difficult to remember just what correspondence was written a couple of years ago - I believe, I know that letters were written to the school board going out of this whole complex which was affected in that open letter.

MR. BURR: Is it your position Mr. Blue, that you or

your group made efforts to solicit the cooperation of the school board in the month of May or prior to the month of May, 1959, on grievances that your group had.

MR. BLUE: Yes sir. We tried to get with them in order to discuss the very things that are in that letter and were unable to do so.

MR. BURR: But you have made no effort such as exhibit 7 to bring these matters to their attention, have you?

MR. BLUE: Not in complete written form no, we supposed we would do it in conversation at a meeting.

MR. BURR: So this is your first effort, or was your first effort to reduce to writing the grievances that your group had and to serve a copy of these grievances on the school board.

MR. BLUE: Yes sir.

MR. BURR: And simultaneously therewith you saw fit to also distribute these grievances to the citizens of the City of Seward.

MR. BLUE: That was precisely the purpose of the open letter as you see it was addressed to school board and to the citizens of Seward.

MR. BURR: It is addressed to - would you tell me where?

MR. BLUE: An open letter to the Seward School Board - I'm sorry it doesn't appear on there, I was mistaken.

MR. BURR: But it was designed to also be a letter to the public at large in and about the City of Seward - and you meant for both bodies to receive this information simultaneously.

[46] MR. BLUE: Yes sir.

MR. BURR: So it was an effort to solicit the cooperation of the public at large in addition to the Seward Public School to hear your grievances.

MR. BLUE: Yes sir, we thought the public should be informed.

MR. BURR: Now, as a teacher of 14 years experience, would you tell me whether or not you are of the opinion there was anybody to whom the Seward Public Schools was responsible?

MR. BLUE: I believe the Seward Public School is responsible to - do you mean the School or the School Board?

MR. BURR: I'm talking of the Seward School Board.

MR. BLUE: Yes, I believe the Seward School Board is responsible to the electorate.

MR. BURR: Did you consider in the spring of 1959, the month of May, or prior thereto, that the school board, the Seward School Board was responsible to say the City Council of Seward.

MR. BLUE: There are certain connections, but not directly, no sir.

MR. BURR: Would you consider, or did you consider in May 1959 the Seward School Board to be responsible to the Superintendent of Education of the State of Alaska, or the Territory? If such was the case.

MR. BLUE: Not in certain defined limits, yes sir.

MR. BURR: As point of fact members of your group made applications to the Superintendent, the Director of Education, didn't they?

MR. BLUE: I know that one of these letters was mailed to them at the same time.

MR. BURR: At the same time? Had any previous efforts been made to solicit a ruling for an appeal to the Commissioner of Education prior to your soliciting the help of the public at large of Seward?

MR. BLUE: I don't recall sir.

MR. BURR: But you were the president of the American Federation of Teachers, Seward Local?

MR. BLUE: That is correct sir.

MR. BURR: In May 1959. But it's your testimony that you have no recollection of any efforts to appeal to the instrumentality of the body to whom the Seward Public School Board was responsible.

MR. BLUE: As I understand it, sir, the School Board is pretty largely autonomous.

MR. BURR: I don't want dissertation of law, Mr. Blue I want you to answer the question.

MR. WALTON: Give him an opportunity to, Mr. Burr.

MR. BURR: Is it your feeling and your position at this time Mr. Blue that each and every item of the ten items on Exhibit 7 are true in every respect?

MR. BLUE: To the extent that the people working on them conscientiously were able to state the truth, yes.

[47] MR. BURR: As president of, and a presiding member at the meeting that approved this document, exhibit 7, did you not have an opportunity to twice disapproval of these items if you had any question of their authenticity?

MR. BLUE: Yes sir, I did.

MR. BURR: Did you make any objections to anyone of them?

MR. BLUE: No, sir, I did not.

MR. BURR: And by that do you mean that you subscribe to the accuracy of each and every item on this document?

MR. BLUE: Yes sir, within limits of ordinary human frailty, yes.

MR. BURR: Are you stating by that or do you mean this board to understand by that that there is some question in your mind as to whether or not the ten items are wholly accurate?

MR. BLUE: There is no question in my mind about any of them.

MR. BURR: Do you believe them to be true?

MR. BLUE: I do sir.

MR. BURR: In every respect?

MR. BLUE: Yes sir, within the limits of human frailty.

MR. BURR: Within the limits of human frailty? Do you know a Charles Miller?

MR. BLUE: I believe I had been acquainted with him.

MR. BURR: Did you have the opportunity or did you by chance preside as a teacher in any class in which the daughter of Charles Miller was a student?

MR. BLUE: I do not know for sure sir, it's very possible.

MR. BURR: Do you know the daughter of Charles Miller?

MR. BLUE: I don't place her.

MR. WALTON: Mr. Burr, May I interject here - if you're going into matters referred to in Exhibit 5, I think you have already stipulated that these appellants shall have their right to testify in that subject matter at such time as deposition of the Millers are taken. I think it would be out of context to go into it now. I don't think it would be suffice.

MR. BURR: Do you know the daughter of Charles E. Miller?

MR. WALTON: Oh, I'm going to make an objection to any further interregation on this point. If Mr. Burr is not going to cooperate. Mr. Casey, we have already entered a stipulation that any of the matters referred to in Exhibit 5 will be gone into by the Millers if their attendance can be secured, and if their testimony can be solicited, and at that time the appellants will have an opportunity to testify regarding the same. I ask the Board now ask Mr. Burr [48] to abide by his previous stipulation and desist from any investigation on this line at this time. He'll have his opportunity when it is relevant. May I have a ruling?

MR. BURR: I would like to comment on that - you're not suggesting Mr. Walton that I am limited in my examination of Mr. Blue as to his activity as member of the Seward Public Schools in the year of 1959 or 1958.

MR. WALTON: I stated Mr. Burr, precisely what I am referring to the contents of the subject matter referred to in Exhibit 5.

MR. BURR: Well, I was referring in particular to any and all immoral acts, within the definition of the act, that we are concerned with here, that Mr. Blue did or was connected with at the time in question and I state that it is pertinent, relevant, and without any regards to any subsequent deposition that may be made.

MR. WALTON: You are referring to the alleged immoral acts, aren't you?

MR. BURR: He can deny anything that I ask him certainly he is at liberty to deny it, and I'm assuming he will.

MR. WALTON: I have made a motion and I ask Mr. Casey for a rule on it. May I also ask that any communication between Mr. Burr and the chairman be public and be recorded.

MR. CASEY: I sustain your motion, sustained.

MR. BURR: Your ahead.

MR. WALTON: Thank you, sir.

MR. BURR: Did you ever make any statements or speeches to the Seward Local of Longshoreman's ILWU?

MR. BLUE: Yes sir.

MR. BURR: Do you recall approximately when these statements were made?

MR. BLUE: I don't know if I remember the date sir, I suppose it must have been in the spring of 1960 - I don't remember.

MR. BURR: In the spring of 60 or 1959?

MR. BLUE: I don't remember. I guess -

MR. BURR: Do you recall whether or not the speeches or the statements you made were at or about the same time as Exhibit 7 was distributed in and about Seward?

MR. BLUE: I don't remember the sequence of it, but it would be generally within that area of time, yes.

MR. BURR: Do you recall what the occasion was that motivated the speeches that you made?

MR. BLUE: Yes sir.

MR. BURR: Will you tell us?

MR. BLUE: Certainly. The American Federation of Teachers were at that time circulating a recall petition to recall certain members of the Seward School Board.

MR. BURR: What was your function in appealing to the I.L.W.U.?

MR. BLUE: To get support in this action.

[49] MR. BURR: Support by way of signatures on this petition?

MR. BLUE: Perhaps passing a resolution or by way of the membership individually supporting it by signatures, or by votes.

MR. BURR: Did you ever make any statements before such a group or any group that you were out to get Mr. Fabricious and that he was the target of your efforts?

MR. BLUE: No sir.

MR. BURR: Did you ever make any similar statements to that?

MR. BLUE: Not that I recall sir.

MR. BURR: Did you make a statement before a group of union members of the International Longshoreman's and Warehouseman's Union in Seward to the effect that we have been unable to get rid of the superintendent and we are going to get rid of the Board?

MR. BLUE: No sir.

MR. BURR: Did you make a similar statement?

MR. BLUE: Not that I recall sir.

MR. BURR: Is it possible that you did and don't recall?

MR. BLUE: I don't think so.

MR. BURR: You don't think so - is there any question in your mind as to whether you did or didn't?

MR. BLUE: I'm certain I did not make that statement. Mr. Casey was there he perhaps can confirm that.

MR. BURR: We have no further questions.

MR. WALTON: May I please see that last exhibit - I don't know what number was assigned to it - Fourteen is it?

Mr. Blue, I believe you have testified that there were originally 18 members of the AFT?

MR. BLUE: Yes sir.

MR. WALTON: And that it was a group decision by virtue of a formal resolution to author and distribute Exhibit 7.

MR. BLUE: Yes sir.

MR. WALTON: The open letter.

MR. BLUE: Yes sir.

MR. WALTON: Do you know how many of those 18 original members are now teaching in the Seward Public School System?

[50] MR. BLUE: I believe that there are 4.

MR. WALTON: Do you know what those persons names are?

MR. BLUE: I believe I do sir.

MR. WALTON: What are they?

MR. BLUE: Mrs. Grace Campen, Mrs. Joanne Hoogland, Mrs. Marie Elbe, Mrs. Blanche Miller.

MR. WALTON: Do you know whether or not the persons were present at the meeting at which the group resolved to author and distribute the open letter.

MR. BLUE: I don't remember sir.

MR. WALTON: Do you know whether of not any of those four individuals had participation in the authorship of the letter?

MR. BLUE: Yes sir.

MR. WALTON: Please explain your answer.

MR. BLUE: Mrs. Hoogland participated in it. I don't know whether they were participating by vote or not, could be. Sometimes meetings were attended only by part-membership.

MR. WALTON: Do you know whether any of those four individuals were ever renounced memberships subsequently in the AFT.

MR. BLUE: Yes, sir, I know that.

MR. WALTON: What is the answer?

MR. BLUE: All but one of them has dropped membership.

MR. WALTON: They dropped membership? Which is the person that is still a member?

MR. BLUE: Mrs. Elbe.

MR. WALTON: When you say the other three persons dropped membership, how do you ascertian when a person dropped membership?

MR. BLUE: When they don't pay their dues or make a statement to the effect that they are not going to continue with the group. This was solicited.

MR. WALTON: What was solicited?

MR. BLUE: The discovery of their membership status.

MR. WALTON: By whom?

MR. BLUE: By me.

MR. WALTON: Do you know when the 1958-59 school year ended?

MR. BLUE: Early in May.

MR. WALTON: Do you remember the date?

[51] MR. BLUE: No sir.

MR. WALTON: Do you remember when graduation exercises were held?

MR. BLUE: I'm not sure of that.

MR. WALTON: Do you know whether or not school was still in session on May 18, 1959?

MR. BLUE: I'm sure it was not.

MR. WALTON: When you state that the AFT prior to May 18, had attempted to negotiate with the Seward School Board, to what are you referring?

MR. BLUE: We had written letters to them and tried to arrange meetings with them and since that had not come about, we were not successful.

MR. WALTON: Can you specify in detail what meetings did you try to arrange with the Seward School Board? on behalf of the AFT?

MR. BLUE: One of them that we arranged was the open hearing in which Mr. Ervine helped secure the contracts of the non-retained teachers.

MR. WALTON: That was on May 8, 1959, was it not?

MR. BLUE: I believe so.

MR. WALTON: Were you present at that meeting?

MR. BLUE: Yes sir.

MR. WALTON: Who else was present? Was that a public meeting or a private?

MR. BLUE: A public meeting.

MR. WALTON: Held between the School Board and representatives of AFT?

MR. BLUE: Yes sir.

MR. WALTON: And attended by the public at large?

MR. BLUE: Yes sir.

MR. WALTON: And who were the representatives of the AFT at that meeting?

MR. BLUE: Well, I was there and Attorney Pat Ervine was there as the spokesman for our group.

MR. WALTON: And what were the matters that came up for discussion and determination at that meeting?

MR. BLUE: That matter of non-retention, illegal non-retention of three teachers and question of educational leave, I believe.

MR. WALTON: Who appeared on behalf of the AFT?

MR. BLUE: Mr. Pat Ervine.

[52] MR. WALTON: And, anyone else?

MR. BLUE: He was the spokesman for the group. I suppose most of the membership were there.

MR. WALTON: And the illegally non-retained teachers names were what?

MR. BLUE: Mrs. Anna Svudlund, Mrs. Sue Hollenbeck, Mrs. Deborah Armstrong and there was one other who was not contesting.

MR. WALTON: Prior to that meeting of May 8, had you or anyone else on behalf of AFT communicated with the School Board by letter, to your recollection?

MR. BLUE: I believe we had, sir.

MR. WALTON: Do you recall who signed the letter in question?

MR. BLUE: Either I would have signed them or Mr., Mrs. Muir, Mr. Watts would have, they were the officers.

MR. WALTON: At the AFT-Seward School Board meeting on May 8, was there any objection made by any representative of the School Board that the matters then discussed had not been first processed through the superintendent?

MR. BLUE: I don't recall sir.

MR. WALTON: Has the Seward School Board ever contacted either you personally or your group objecting to contacting the Seward School Board without first going through the Superintendent before you got letters of non-retention?

MR. BLUE: Not to my recollection sir.

MR. WALTON: So that the first time you ever learned

that the Seward School Board objected to your having proceeded directly to the Board rather than to the superintendent was when you received your letter of non-retention in 1960.

MR. BLUE: I believe that's correct sir.

MR. WALTON: Following May 8, 1959, was there not a subsequent meeting held between the AFT and members or representatives of the Seward School Board?

MR. BLUE: Yes sir.

MR. WALTON: What date was that? May 16th, wasn't it?

MR. BLUE: I think it was that date sir.

MR. WALTON: Where was that meeting held?

MR. BLUE: I believe it was held in the basement of the Methodist Church.

MR. WALTON: And who represented the AFT at that meeting to your recollection?

MR. BLUE: The membership was there - a good portion of them, most of the membership was there.

[53] MR. WALTON: Was this meeting as a result of any communication with the Seward School Board?

MR. BLUE: Yes sir.

MR. WALTON: Whose communication?

MR. BLUE: Communication with Mr. Howell, the president.

MR. WALTON: Who made it? Who communicated?

MR. BLUE: I did sir.

MR. WALTON: What did you say to Mr. Howell preceeding this May 16th meeting?

MR. BLUE: I don't recall sir whether that was done by letter or by telephone, it may have been both, but it was with the intent that we get together and exchange ideas, find out whether our grievances were valid, what could be done about them and so forth.

MR. WALTON: When you are talking about the grievances, you are talking about the things that were set forth in Exhibit 7?

MR. BLUE: Yes sir.

MR. WALTON: Now, did Mr. Howell respond to that invitation?

MR. BLUE: Yes sir, he did.

MR. WALTON: What did he do?

MR. BLUE: He agreed that a meeting would be held and that the School Board would be present.

MR. WALTON: On May 16th?

MR. BLUE: Yes sir.

MR. WALTON: Did he say, no we cannot meet with you until you have first processed your grievances through Mr. Fabricious?

MR. BURR: Objection.

MR. WALTON: Are you going to make objections to leading questions, Mr. Burr? Very well, Did he make any objection at all to such a meeting?

MR. BLUE: No sir, except to the matter of arranging time.

MR. WALTON: Did the subject of processing complaints first through the Superintendent come up?

MR. BLUE: Not that I recall sir.

MR. WALTON: At the May 16th meeting, who else appeared on behalf of the Seward School Board.

MR. BLUE: Only one member of the School Board appeared which was Mr. Howell himself.

[54] MR. WALTON: What did he say, if anything, with respect to the other members of the Seward School Board?

MR. BLUE: I think that first he had said that they would attend and then he told them that they were not attending when he came but he was there.

* * *

[65] MR. BURR: At this time our next witness will be appellant Watts and I would like to make the request whether or not there is any portion of his testimony that we can stipulate, Mr. Walton?

MR. WALTON: We will stipulate the following matters which we believe Mr. Watts will testify: 1. That he was a

member and still is a member of the S.D.T.A. excuse me, he was a member of the S.D.T.A. at least prior to May, 1959, that he is a charter member and is still a member of the A.F.T.; that as a member of the A.F.T. he subscribed to and sanctioned AFT's determination [66] to author and distribute on open letter which copy is Exhibit 7; and that as a member of the AFT he authorized and sanctioned the preparation and distribution of the petition seeking recall of certain school board members; and that finally that he himself, as a member of the AFT did assist in the distribution of both the open letter and the petition for recall.

MR. BURR: That he did what?

MR. WALTON: He did assist in the distribution of both the open letter and the petition for recall. Incidentally, has that petition been introduced in evidence? Is there a copy of it?

MR. BURR: I believe not.

MR. WALTON: May I inquire Mr. Burr is this going to be one of the basis of the charges brought against Mr. Watts and Mr. Blue?

MR. BURR: It's one of the bills of particulars, I just overlooked offering it, I will offer it. I don't know if the Board will base its findings on the distribution of the bill in light of their recent stature in the election.

MR. WALTON: Those are the matters to which we can readily stipulate.

MR. BURR: Would you be willing to stipulate that Mr. Watts was during the spring of 1959 familiar with what we have offered as Exhibit 12 in these proceedings, which is the Seward School Board's Regulations.

MR. WALTON: You mean which is proported to be the School Board's Regulations. The answer is yes.

MR. BURR: And would he likewise be willing to stipulate that he is familiar with Section 7, which has been referred to in this Exhibit, on page 3.

MR. WALTON: Yes.

MR. BURR: And would he likewise be willing to stipulate that he was head of the grievance committee of the S.D.T.A. in the spring of 1959?

MR. WALTON: I cannot stipulate that he was the head of it, but he was a member of that group.

MR. BURR: Well, would he be willing to further stipulate that as a member of that committee he did solicit the cooperation of the two Framptons as previously testified to.

MR. WALTON: That is not correct. That's why we can't so stipulate.

MR. BURR: In this particular respect I should like to ask Mr. Walton a question again.

MR. WALTON: Very well.

MR. BURR: As for the other, I should like to offer a stipulation as to the other materials to avoid questioning on that grounds, so if it is agreeable I will be willing to enter into a stipulation with you that if were [67] called to testify that he would as to the matters suggested by both yourself and me be accepted as his testimony.

MR. WALTON: If you want me to stipulate that he would so testify to your questioning, I will so stipulate, I don't want to be precluded from calling him as a witness and enabling you to testify on the same matters.

MR. BURR: No, that's understandable.

MR. WALTON: So agreed.

MR. BURR: Do you swear the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God.

MR. WATTS: I do.

MR. BURR: Your full name.

MR. WATTS: James A. Watts.

MR. BURR: Your occupation?

MR. WATTS: School teacher.

MR. BURR: Are you presently employed?

MR. WATTS: I am not.

MR. BURR: Have you been employed since the year 1959.

MR. WATTS: Since the Spring of 1960, I have not been.

MR. BURR: Since when in 1960?

MR. WATTS: The latter part of May at the end of the school year.

MR. BURR: The latter part of May when the 1959-60 school year ended?

MR. WATT: Correct.

MR. BURR: Have you made any efforts to be employed since then?

MR. WATTS: Only in temporary capacity.

MR. BURR: Well, have you made any applications for employment as a school teacher elsewhere?

MR. WATTS: I have not.

MR. BURR: So you don't know whether or not you would be accepted in other areas for the purpose of teaching school, not having made application?

MR. WATTS: I do not know for sure.

MR. BURR: And you have made no effort to seek permanent employment elsewhere.

MR. WATTS: Only locally on a temporary basis.

[68] MR. BURR: My question was you have made no effort to secure permanent employment elsewhere?

MR. WATTS: That is correct.

MR. BURR: In the spring of 1959 Mr. Watts you were a member of the grievance committee of the S.D.T.A., were you not?

MR. WATTS: Yes.

MR. BURR: And were there other members on the grievance committee?

MR. WATTS: There were.

MR. BURR: What were their names?

MR. WATT: Mrs. Copeland, Mrs. Winninghoff, Mr. Zwick. Mrs. Copeland was chairman.

MR. BURR: But you were a member of this committee?

MR. WATTS: Yes.

MR. BURR: Can you tell me whether or not that committee was engaged in an effort to devise and carry out a plan of removing the superintendent of the Public Schools of Seward in the spring of 1959?

MR. WATTS: To my knowledge it was not.

MR. BURR: Was that within their planning, future planning under any circumstances?

MR. WATTS: No.

MR. BURR: Did it ever enter your discussions as a member of this committee?

MR. WATTS: To my knowledge, no.

MR. BURR: Did it ever enter into any conversation that you had with either of the two Framptons?

MR. WATTS: No.

MR. BURR: You heard their testimony under oath, did you not, Mr. Watts?

MR. WATTS: I did.

MR. BURR: Is it your position that both of these people are lying?

MR. WATTS: It is my position that they are mistaken - I did not say it. Their statement does not agree with mine.

MR. BURR: You will agree with me that their testimony was not equivocable in any respect concerning your testimony, would you not?

MR. WATTS: Would you mind stating that question again?

[69] MR. BURR: Would you not agree with me that their testimony after what you said was not equivocable, there was no doubt in their mind as to what they claimed you said. Would you agree with that position?

MR. WATTS: I cannot state because I do not know what was in their minds.

MR. BURR: You head what they said that you said on this occasion.

MR. WATTS: That is correct.

MR. BURR: Do you have any contention that what they are saying is not the truth?

MR. WATTS: Would you state that again?

MR. BURR: The question was you head what both of the Framptons had to say about what you said in the spring of 1959 in their opinion and based upon their recollection.

MR. WATTS: I head it, yes.

MR. BURR: Well, are you telling me that it is false in any particular?

MR. WATTS: According to me it is false.

MR. BURR: What part of their testimony is false?

MR. WATTS: The part referring to why I was there and what I said to them in relationship for the purpose of meeting with them.

MR. BURR: Would you be so kind as to correct their false testimony.

MR. WATTS: Is it alright if I start from the beginning again?

MR. BURR: You tell your story.

MR. WATTS: All right.

MR. BURR: Remember you're under oath, Mr. Watts.

MR. WATTS: Yes sir.

MR. BURR: You do believe in God, don't you?

MR. WATTS: I certainly do.

MR. BURR: All right, proceed.

MR. WATTS: I did not go to Mr. Frampton and Mrs. Frampton on behalf of the grievance committee of the Seward District Teacher's Association. I was there at the request and agreement of the Executive Committee of the Seward District Teacher's Association which had a meeting the previous evening, and executive meeting of 7 members, all 7 members of the Seward District Teacher's Association voted unanimously to continue efforts to try to get the contracts of the non-retained teachers and it was the request of the members of this 7 man executive committee that I speak to Mr. and Mrs. [70] Frampton on behalf getting their support in the voting that was to be held that night in the Seward District Teacher's Association meeting to further continue efforts to get these contracts for these teachers. As they stated, Mr. and Mrs. Frampton, in their testimony, I went because I know them well and I recognized the fact, and we all recognized the fact that a subordinate administrator is directly under the control of a superior administrator, also that there's a question before the school board at this time of whether husband and wife would be permitted to teach in the same building. Also at this time Mrs. Frampton was teaching under a temporary certificate which could be nullified at the next contract time if some-

one of higher qualifications made a press for her contract, if the administration and school board so desired. We felt that since they were in a difficult position, many of us that time did not know that Mr. Frampton had been a party to the causes, or the reasons for the dismissal and non-retention of some of these teachers under consideration. That is the reason why I was there. I said when I arrived substantially what Mr. and Mrs. Frampton said insofar as that we had been friends for many years, and that I was there on behlaf of getting their support and asking them support, if necessary. I reminded them that they were having the critical vote at the Seward District Teacher's Association meeting very much as I have previously outlined now and that we would like to have their support in this matter. Mrs. Frampton stated that she and her husband were in strong, in complete agreement with the administrator's policies and methods and could not go along with us. Mr. Frampton concurred with her. Then I also stated that I was sorry that they were taking that position, that things might become more difficult and I hoped that none of us were seriously injured or injured at all in this thing, and I appreciated their consideration and hoped that there could be harmony again soon. And then I left because it was almost time for 8:30 bell.

MR. BURR: It's your testimony Mr. Watts that no reference at any time during this conversation was made conconcerning the superintendent of public schools of Seward?

MR. WATTS: In what respect?

MR. BURR: In any respect.

MR. WALTON: Excuse me, Mr. Burr did you understand him to so testify?

MR. BURR: I'm asking the question, Mr. Walton, if he doesn't understand, I'll be glad to clarify it.

MR. WATTS: I cannot recall that his name was ever mentioned.

MR. BURR: Was the capacity of superintendent ever mentioned?

MR. WATTS: Not to my knowledge.

MR. BURR: Is it possible that you discussed this matter and don't remember it, Mr. Watts?

MR. WATTS: It is very unlikely that I wouldn't remember because that was a meeting of strong feeling.

MR. BURR: Is this a possibility, Mr. Watts?

[71] MR. WATTS: I cannot say.

MR. BURR: Well, do you prefer to say that it is not a possibility in which case the testimony of Mr. and Mrs. Frampton is false.

MR. WATTS: In my opinion the major part of their testimony is false.

MR. BURR: Perjury is a very strong accusation, Mr. Watts.

MR. WALTON: Now, here I will object. This is clearly an attempt to intimidate this witness. He doesn't have to be reminded, nor does it have to be suggested that he is accusing someone of perjury. It is not an accusation of curt perjury to say that someone else's testimony is false. There are more elements to it than that.

MR. BURR: Do you believe that Mr. and Mrs. Frampton would give false testimony under oath Mr. Watts?

MR. WATTS: I have always felt that they were both of high character.

MR. BURR: You haven't answered my question.

MR. WATTS: I do not know.

MR. BURR: You have no opinion in that regards?

MR. WATTS: I have thought about it a great deal.

MR. BURR: Well, did you arrive at any conclusions?

MR. WATTS: No I have not to this date.

MR. BURR: Do you have a reserved opinion as to whether or not they are lying?

MR. WATTS: I did not say that.

MR. BURR: Assuming that you had made such a request of the Framptons as indicated in their testimony, Mr. Watts, would it be your testimony at this time that that would have been one of your lawful functions as a member of the grievance committee of the Seward District Teacher's Association?

MR. WATTS: The Seward District Teacher's Association grievance committee was not functioning at that time.

MR. BURR: You mean you were not appearing as a member of the grievance committee when you testified that you talked to the Framptons?

MR. WATTS: I was not a member of the grievance committee at that time.

MR. BURR: What capacity did you have.

MR. WATTS: Executive council of the Seward District Teacher's Association.

MR. BURR: Well, would you consider it to have been one of your lawful functions to do what the Framptons claim that you did? [72] Assuming that what they say is true.

MR. WALTON: Excuse me this question I think is a little vague, could Mr. Burr perhaps please outline specifically what he

MR. BURR: If this witness doesn't understand the question, Mr. Walton, I'd be happy to rephrase it. I don't think he needs your assistance in telling him what he understands.

MR. WALTON: Now, Mr. Chairman, I don't want to engage in an argument with Mr. Burr, but it's my privilege to object if a question is in its form, not clear.

MR. BURR: It's most unorthodox for the counsel ıe for the opposing side to tell a witness when he doesn't understand a question and I think you will agree with me.

MR. WALTON: Now, Mr. Chairman, I did not tell the witness he did not understand. I objected to the form of the question as being unclear. I reiterate my objection.

MR. BURR: Do you have any questions about what I asked you?

MR. WATTS: I would like to have you ask that question again.

MR. BURR: Do you have that question?

RECORDER: Do you consider it would have been one of your lawful functions as an executive of S.D.T.A. to do what Mr. and Mrs. Frampton said.

MR. WALTON: I have made an objection. I would like

to have the chairman rule on my objection. I objected to the form of question on the grounds that it is unclear, it being not stated precisely what it is that reference is made to.

MR. BURR: Do you understand the question Mr. Watts?

MR. WALTON: May we please have a ruling, Mr. Burr.

MR. BURR: Mr. Watts do you understand the question?

MR. WATTS: Yes I understand the question.

MR. CASEY: Overruled.

MR. BURR: Will you answer the question.

MR. WATTS: Under these conditions and under these circumstances at that time I would consider it unethical.

MR. BURR: You consider - again this is an assumption that what they are saying you did and said would be true, then it's your opinion that what they said is true, it would be unethical for you to have said that. Would you tell me why in your opinion it would have been unethical for you to take such a position?

MR. WATTS: At the time and conditions of the situations brought this meeting about the conditions and situations between the large part of the faculty and the administration had not deteriorated to the point where stronger action would have been warranted or necessary, in my opinion.

[73] MR. BURR: And by stronger action you mean some affirmative effort on the part of the teachers themselves to remove the superintendent?

MR. WATTS: Not necessarily.

MR. BURR: Do you believe that it's within the scope of responsibilities and duties of a school teacher or a body of schools teachers to take matters into their own hands without exhausting the remedies provided by law to remove the supreme administrator, namely the superintendent, if in their judgment this course of action is required?

MR. WATTS: In a hypothetical situation, I believe that all employees have the right in ultimate situations to go to the constituted legal employers and ask for redress of grievances to whatever extent they feel is necessary to remedy a severe situation.

MR. BURR: Well, do you believe that regulations are made to be abided by?

MR. WATTS: To a large measure I believe that regulations are meant to be followed and used and to be abided by whenever it's possible to do so.

MR. BURR: I take it then that there are situations in your judgment when it may not be indicated that following regulations to the letter is proper?

MR. WATTS: Sometimes it is impossible to follow regulations because doors are closed to you.

MR. BURR: You have indicated previously by your stipulation that you are familiar with Exhibit 12 which purports, as Mr. Walton says, to be the School Board's Regulations?

MR. WATTS: Yes.

MR. BURR: And you were familiar with these regulations at the time in question, in the spring of 1959?

MR. WATTS: In a general way, yes.

MR. BURR: Would you not concede that it was your business as a teacher to be somewhat more than familiar in a general way with these regulations?

MR. WALTON: Now, I will have to object to this question. This question as stated presumes that in fact regulation were adopted. I think the Board will concede that this hasn't yet been proved.

CHAIRMAN: Mr. Burr will you please rephrase the question?

MR. WALTON: Until it is shown to me that these were actually adopted by the Board as regulations it was no duty upon anyone to pay any attention to them.

MR. BURR: Thank you for your observation on point of law, Mr. Walton. Request ruling.

MR. CASEY: As I recognize these were the regulations of the School Board, I will have overrule your objection. Proceed.

MR. BURR: Getting back to my question, Mr. Watts, would you not concede that the regulations, or the purported regulations, of the Seward School Board, Exhibit

12, in view of the fact that you have indicated a knowledge of these purported regulations in the spring of 1959, would you not concede that as a teacher [74] you had a duty to be more than just generally familiar with these regulations?

MR. WATTS: The question comes up of what we mean with generally familiar with the regulations.

MR. BURR: Would you not consider it fair to state that a teacher in any school system is bound by all applicable rules and regulations of that system?

MR. WATTS: Not if conditions are such that they cannot function. No set of rules can foresee all difficulties that might arise.

MR. BURR: But will you not concede that insofar as the regulations appear to be unequitable that a school has an obligation to abide by the regulations and the procedures as outlined in the regulations?

MR. WATTS: They should make very serious efforts to follow the regulations as outlined by the properly constituted authorities.

MR. BURR: Is there some question in your mind, Mr. Watts, that Exhibit 12, is what is purports to be.

MR. WATTS: There is doubt in my mind.

MR. BURR: Then you considered in the spring of 1959 that what is designated as Seward School Board regulations was not in fact binding upon you.

MR. WATTS: It was binding on me to the extent that I believe in observance of laws and regulations to the best of my ability.

MR. BURR: Let's go back. You indicated a knowledge of what purports to be the School Board Regulations at the time in question, spring of 1959. You know of the existence of what purports to be the Seward School Board Regulations.

MR. WATTS: Yes.

MR. BURR: Then you are taking the position at this point that you knew of them and believed them not to be binding on you as a member of this system?

MR. WATTS: Not absolutely binding.

MR. BURR: Well, in what respect were they not binding - that's what I'm trying to get at.

MR. WATTS: To the extent - they were not binding to the extent that in cases were the regulations could not facilitate the solution of a problem that you have to then sometimes bypass or use some other method as near the regulations as you can.

MR. BURR: Then what you are saying, is in effect is that you recognized these regulations insofar as they would answer your questions, and if there came a question the regulations could not answer, then you would not consider these regulations binding upon you as a teacher?

MR. WATTS: I would feel that I would have to use the framework of the regulations to try to attain the objectives that we were trying to attain.

[75] MR. BURR: Then if at that time regulations did not achieve that objective it would be your contention that you could take the law in your own hands and find a solution as you apparently did. Is that your position?

MR. WATTS: Would you restate your question?

MR. BURR: If in the regulations you couldn't find a satisfactory solution to your problem, it would be your feeling, and it was your feeling in the spring of 1959, that you were lawfully entitled to go outside these regulations and find your solution as best you could.

MR. WATTS: To the extent that if I could not find a solution in the regulations to my objectives I would try to go, if possible, someway to reach the superior authority that I was responsible to, which was the elected School Board in this case.

MR. BURR: But you will concede that insofar as the regulations provided a remedy that you would be duty bound as a teacher to follow that remedy.

MR. WATTS: Every person that has to follow a set of regulations has to interpret those regulations as best they understand them.

MR. BURR: Mr. Watts, I don't want a dissertation on my questions. I want an answer then you may explain them.

MR. WATTS: All right, state your question again.

MR. BURR: Insofar as these regulations provide a procedure would you not concede that it was your responsibility to follow that prescribed procedure until you had exhausted that procedure and found it to be unsatisfactory. Yes or no, than you may qualify it you want to?

I take it by your reluctance to answer there's some doubt in your mind as to what your duties were?

MR. WALTON: I will object to that assertation of criticism. Perhaps we should let Mr. Watts state whether or not he's reluctant to answer before Mr. Burr volunteers it for him.

MR. WATTS: I am reluctant to answer that question.

MR. BURR: You refuse to answer it?

MR. WATTS: No, I said I am reluctant.

MR. BURR: Please, don't be reluctant, and please answer it, it's a most important question.

MR. WATTS: It is to me also.

MR. BURR: Take your time then.

MR. WALTON: May I request that the answer be read back, I've forgotten it.

MR. BURR: The answer or the question?

MR. WALTON: Question. I think it was a long one.

[76] MR. BURR: Well, let me rephrase it then.

RECORDER: Insofar as these regulations would you not concede that it was your responsibility follow these regulations as far as you could to find the best solution - then there were some more words of Mr. Burr's that I didn't catch.

MR. WATTS: My answer to that question is yes.

MR. BURR: My next question to you is did you in fact follow the regulations and exhaust the remedies provided for therein in the spring of 1959 before planning and distributing the exhibit which is identified as exhibit 7, an open to the school board and the public?

MR. WATTS: I feel that I had, we and I, had exhausted all possible means of solving our problems - that is the only reason for bringing out this letter.

MR. BURR: Did you as an individual or as a representa-

tive of the Teacher's group, address your complaints to the superintendent individually before compiling Exhibit 7 and distributing Exhibit 7 to the public?

MR. WATTS: Our group, the Seward, the American Federation of Teachers, had tried to meet the school board and had failed to complete a meeting with them.

MR. BURR: Had you in fact addressed and communicated a complaint as to each of the ten items on Exhibit 7 to the superintendent of schools, Mr. Fabricious individually, prior to distribution of exhibit 7 to the public in Seward.

MR. WATTS: To my knowledge, no.

MR. BURR: I should like to direct your attention to paragraph 9 on page 4 of the Seward School Board Regulations, or what purports to be, and ask you whether or not that doesn't require a communication of complaints to the superintendent before any further action is taken. Take your time and read it.

MR. WATTS: May I read this aloud?

MR. BURR: I prefer you read it to yourself and then tell us whether you understand it or not.

MR. WATTS: I understand it.

MR. BURR: Well, for the record I should like to read the first part of it, I'll read the whole thing in fairness to you. Paragraph 9 - "Employees or groups of employees desiring to address the board shall address their communication to the superintendent and not to the individual members of the board, except that copies of the communication may be sent to board members." How did you address a communication to the Superintendent distinghished from the public at large and the school board of Seward?

MR. WATTS: We addressed the open letter to the School Board, with copies to the public.

MR. BURR: Well, you'd concede that you didn't follow the regulations which says that you should address them to the superintendent and not to the individual members of the board and it certainly doesn't mention distributing them to the public does it? Paragraph 9 - do you

see anything in here that says you distribute them to the public before you give them to the School Board. If you do, please tell me where it is?

[77] MR. WATTS: There's nothing here that says it can't be distributed to the public.

MR. BURR: Well, the fact it doesn't appear would license it in your opinion.

MR. WATTS: In this case yes.

MR. BURR: Thank you. In fact, if the law says you can't kill a man with an axe, you can kill him with a rifle legally, is that what you mean?

MR. WALTON: I object. Mr. Chairman will you please rule on the propriety and applicability of this question?

MR. BURR: I'm trying to get to the bottom of this man's mind as I don't understand it. I want him to explain this to me.

MR. WALTON: Well, I don't understand Mr. Burr's logic, Mr. Chairman.

MR. BURR: Let me - I'll rephrase it - it's not important. Let me just make sure I understand you. The fact that it doesn't say you *can't* carry these complaints to the public at large was your justification, Mr. Watts in believing that you could. Is that correct?

MR. WATTS: If you'll let me finish the statement afterwards.

MR. BURR: You may yes, just answer my question then you can explain it. Does that fairly state your position?

MR. WATTS: My position is

MR. BURR: No just say yes or no it doesn't - then explain it.

MR. WATTS: I will have to ask for the question again.

MR. BURR: Does the fact that paragraph 9 of the regulations on page 4, the fact that that says that you cannot, or the fact that it doesn't make any reference to distributing complaints to the public at large is your justification for believing that it was permissable.

MR. WATTS: I believe it was permissable.

MR. BURR: And you base that upon the fact that

there's no mention made in the regulations as to whether or not this is proper. In the face of an admonition that it be presented first to the superintendent.

MR. WATTS: I would like to make my explanation for my reason.

MR. BURR: I guess you better - go ahead.

MR. WATTS: First, I was one of eighteen members of the American Federation of Teachers, acting only as one of thier agents, in complete agreement with their voted decision to publish this open letter. The reason it was decided and voted to publish this open letter was because our efforts to reach the school board to solve our problems about what was happening to us during the year failed. They had not not with us even after school was was out in the spring after it was agreed they would meet with us. Our members were falling, would be falling rapidly within the next week - some would be going away [78] to work, some would be going away to school and we felt we had to reach the board someway and it was our conviction, specifically my conviction that when all avenues are closed to you meeting with public officials that the ultimate authority lies with the electorate, and in using this means to reach the school board and the electorate on our problem.

MR. BURR: Are you through?

MR. WATTS: At this time.

MR. BURR: Well, in your distributing exhibit 7 to the public what did you hope to attain?

MR. WATTS: We would like to have gotten a meeting with the School Board.

MR. BURR: The letter bears the address an open letter to the Seward School Board, Seward, Alaska - Gentlemen. Now was this letter designed to be a communication to the Seward School Board and nobody else?

MR. WATTS: To the Seward School Board and the electorate of the community of Seward.

MR. BURR: Did you not consider the Seward School Board to be autonomous from the public insofar as their elected duties were being properly performed.

MR. WATTS: I do not believe any elected group is autonomous if they cannot and will not consider problems which are properly theirs for consideration.

MR. BURR: You haven't answered my question. Will you not concede in that in our system of government, including school government, that an elected body is autonomous from the electorate insofar as they do only what the law allows and requires them to do. Other words, do their duties, and insofar as they do their duties, they are autonomous from the electorate. Would you concede that?

MR. WATTS: With this reservation. That when the elected members do not do the will of the people a group or the people have the right to have those elected members brought up for consideration to see whether they are expressing the will of the people.

MR. BURR: But Exhibit 7 is the only evidence that I have in my possession that you have made any such communication to the Seward School Board. Do you have other efforts in writing?

MR. WATTS: Yes.

MR. BURR: Addressed to the Seward School Board?

MR. WATTS: Yes.

MR. BURR: Were they processed through the Superintendent of Public Schools?

MR. WATTS: I believe they were processed simultaneously to all members of the board and the superintendent.

[79] MR. BURR: Once again you went outside the regulations which prescribes to go through the superintendent on prior cases besides the one I'm talking about. Yes or no?

MR. WATTS: State your question again?

MR. BURR: So there were other occasions besides the incident we are talking about here wherein you went outside the regulations insofar as you didn't go directly to the superintendent first.

MR. WATTS: Yes there were several previous approaches.

MR. BURR: Did you feel at the time you sent exhibit 7 to the School Board that there was a chance that this letter would desire, would accomplish the desired result as itemized in number 1 through 10, items 1 through 10.

MR. WATTS: Item 7?

MR. BURR: Exhibit 7 as your open letter which was delivered to the public at large.

MR. WATTS: Now will you state your question?

MR. BURR: Did you feel at the time you prepared and caused that document to be distributed that it would accomplish the desired result in correcting items 1 through 10? Did you author that, Mr. Watts?

MR. WATTS: I did not.

MR. BURR: Did you help write it?

MR. WATTS: Only as I was a member of the organizaton that approved of everything.

MR. BURR: Did you read it before you delivered it to anybody?

MR. WATTS: I certainly did.

MR. BURR: Well, are you familiar with all of the items on it now?

MR. WATTS: I haven't memorized them but I understand them in general.

MR. BURR: You had read them prior to the mailing, haven't you?

MR. WATTS: Yes.

MR. BURR: Well did you feel that by delivering that document to the School Board that there was a chance that you would correct all of the situations outlined in that document?

MR. WATTS: We hoped that we could correct most of them.

MR. BURR: Well did you believe at that time in the spring of 1959 when you delivered that there was a chance of accomplishing correcting what you considered to be deficiencies.

MR. WATTS: Yes.

[80] MR. BURR: You believe that this School Board

not only had the power but they had the duty and responsibility to correct these deficiencies?

MR. WATTS: To the extent that they felt was reasonable and fair, whatever corrections they made.

MR. BURR: So then you were actually petitioning, in effect you were petitioning the School Board to take some action - you had some grievances and you wanted some action taken.

MR. WATTS: We were trying to get them to meet with us to talk over these problems in detail - we had to specify them.

MR. BURR: You were trying to get a meeting with the Seward School Board?

MR. WATTS: Correct.

MR. BURR: Well will you tell me where in Exhibit 7 you ask the Seward School Board to have a meeting to discuss these grievances if that was the intent of the document?

MR. WATTS: The bottom of page 2.

MR. BURR: What does it say?

MR. WATTS: Therefore we request an immediate special open school board meeting Tuesday night, May the 19th for the purpose of presenting to the board and the public particulars of administration in the Seward Public Schools, with announcement of the meeting by the board on station KIBH, at this time the local shall demand immediate guarantee, substantial improvement, of and administration, administrator's policies included and we list

MR. BURR: What was the date of the meeting that you wanted to have

MR. WATTS: The 19th.

MR. BURR: What's the date of the letter?

MR. WATTS: May the 18th.

MR. BURR: And so the fact that you requested a meeting is an indication in your mind that the Seward School Board at that point had the duty and the responsibility of hearing and entertaining and deciding grievances that you outlined here.

MR. WATTS: We did.

MR. BURR: Is there any reason in that event to make a public spectacle of this item by distributing it to the members of the public at large and if so, what was the purpose thereof?

MR. WATTS: Do you want me to give my reason or the group's reason? I think they are the same.

MR. BURR: Well, if they're the same you needn't differentiate.

[81] MR. WATTS: All right. We felt that the Seward School Board had failed us when they had refused to meet with us on Saturday night the 16th of May after having set up a meeting and even called the president of the Board as late as noon on Saturday asking if it would be agreeable if Mr. Frampton an interested party were to attend that meeting. We agreed to it, we did not know that they were not meeting with us until 8:00 o'clock that night when the president of the Board, Mr. Howell, came before us and reported that they were not meeting with us. We were more than shocked at that time to think they would not meet with us and we were wanting to meet in good faith.

MR. BURR: Was that when you told them to come down to the Methodist Church?

MR. WATTS: I did not negotiate.

MR. BURR: This is the same occasion, isn't it?

MR. WATTS: It's the same occasion.

MR. BURR: And they were unreasonable in not coming down to the Methodist Church.

MR. WATTS: It was suggested that probably neutral grounds would be the best place.

MR. BURR: And that was neutral?

MR. WATTS: It was neutral. It was a rented

MR. BURR: And the school was not neutral?

MR. WATTS: The School Board meeting room was the administration's headquarters.

MR. BURR: Now about the room we're in now - in the public High School. Is that not neutral? Would you consider your cause in this case to be prejudiced by virtue of the fact that you are sitting in the public school?

MR. WATTS: Not at all.

MR. BURR: Well, would you have considered your cause to have been prejudiced to have the School Board meet here in the spring of 1959?

MR. WATTS: To my knowledge the School Board had never met here before and at that time we did not even consider it.

MR. WALTON: Mr. Chairman may I interject a comment, may I object to this line of questioning. This isn't the issue before the board. This meeting is to just last ad infinitum unless we observe some sort of self-imposed restrictions. So I raise an objection to this line of questioning.

MR. CASEY: Mr. Walton, we have been instructed as you know by the State Board to get a full and correct record as possible and I don't know any other means of getting it than trying to get all the facts and I will have to overrule your objection.

MR. BURR: Mr. Watts, you have indicated knowledge of Exhibit 7 which is the open letter to the Seward School Board which has item 1 through 10. Now are you saying at this time that items 1 through 10 were true in every respect at the time you distributed this letter to the public?

[82] MR. WATTS: To the best of my knowledge, I believe every one of them were true at that time.

MR. BURR: Had you thoroughly and exhaustively investigated yourself, or your group, to satisfy yourself beyond any reasonable doubt that each of these items were true?

MR. WATTS: I have investigated many of them and others I had complete confidence in the statements from many sources on the others.

MR. BURR: Item No. 1 "Illegal non-retention of three teachers reflecting the professional reputation of those involved in violation of Section 138 of the laws." Now had there been a lawsuit to determine the illegality of what the school board had done regarding the three non-retention as of the time that you distributed Exhibit 7 to the public.

MR. WATTS: The law was on the statues and to my knowledge had never been contested at that time.

MR. BURR: The question was had there been any legal determination of the legality or illegality of the board's action on item No. 1 of exhibit 7 as of the time you distributed this document to the public?

MR. WATTS: There had been several legal opinions.

MR. BURR: Had there been any legal action. Had a court of competent jurisdiction determined the school board to have been wrong as a matter of law at the time you distributed this letter to the public to your knowledge?

MR. WATTS: The Board itself had expressed an opinion when the grievance committee went to meet with them.

MR. BURR: Mr. Watts, please don't get off on a tangent. Answer my question. To your knowledge had a court of competent jurisdiction determined the Board's action to have been wrong as a matter of law at the time that you distributed Exhibit 7 to the public?

MR. WATTS: I had no knowledge of any court action on it.

MR. BURR: And in spite of that you had the audacity to advise the public of Seward the illegal non-retention of public school teachers was an irregualarity on the part of the School Board?

MR. WALTON: I take exception to the representation that this was

MR. BURR: I ask you to read Item No. 1 and if it doesn't say illegal non-retention, then I'm in error.

MR. WATTS: I don't like the word audacity.

MR. BURR: Well, you can make a suitable substitution.

MR. WATTS: I felt that I was completely justified.

MR. BURR: Did you want the public of Seward to believe that you stood above the courts of Alaska in believing what the Seward School Baord did was illegal before the court ever ruled on it or did you want the public to [83] believe that you were qualified to make a decision on the legality of what they did as a matter of law, as your purported to do in Paragraph No. 1 of that exhibit?

MR. WATTS: This open letter was published after the May 8th School Board meeting in which the local School Board voted to return the contracts for next year to the non-retained teachers at the insistence of the American Federation of Teachers and legal counsel who presented their case here in this room. The fact that the School Board returned the contracts to these teachers was sufficient for me.

MR. BURR: That was sufficient for you to advise the public that what they had done was an illegal act?

MR. WATTS: Yes.

MR. BURR: And you wanted the public to believe that the School Board had done such an illegal distinguished from irregular perhaps in non-compliance with the school tenure law?

MR. WATTS: I'm not an authority on legal terminology.

MR. BURR: Well, I'm happy to have that concession at this late date. But were you of the same opinion when you advised the public that the Seward School Board had done an illegal act by non-retaining, or attempting to non-retain those teachers? Was that what you wanted the public at large to believe, Mr. Watts?

MR. WATTS: It was a matter of opinion. Many people of the public already believed that.

MR. BURR: Then in effect, Mr. Watts, it was the design of you and your group to go actually beyond the Seward School Board in your open letter which appears on Exhibit 7. Was it not?

MR. WATTS: I have not said that.

MR. BURR: Well, are you willing to concede that by virtue of the fact that you distributed this document not only through the mails, but beat doors and hand carried it to the citizens of Seward?

MR. WALTON: Objection. Mr. Burr and Mr. Chairman, some of these questions are really unfair.

MR. WATTS: I haven't heard Mr. Watts complain yet.

MR. WALTON: No, that's why he has an attorney to take care of him if the opposing counsel doesn't guard his rights. One of his rights is that he should not be harassed

by the attorney, that he shall not be stated "you went around beating doors" when there is no such evidence. It is also his right that counsel should not charge him with being audacious, with being presumptuous and stating opinions to the public as to illegality. If Mr. Burr's attempt here is to mock this witness then he is going beyond his duty as an attorney.

MR. BURR: This witness is the one who requested the public hearing, I didn't. I would have been more than happy to have this in private, Mr. Walton. Don't put the burden on me.

[84] MR. WALTON: We want a public hearing we want.

MR. BURR: Well, don't complain about it.

MR. WALTON: I will complain about mockery and sarcasm.

MR. BURR: What was the question again?

RECORDER: Reread the question.

MR. WALTON: We appreciate the fact that the secretary has omitted the very words to which I objected to - beat on doors -

MR. BURR: Well, I'll strike that part of the question if that will satisfy you.

MR. WATTS: I would be happy to answer that question.

MR. BURR: Well, your counsel has objected I think we should have a ruling, unless you want to overrule your counsel.

MR. WALTON: I think Mr. Burr has withdrawn the question.

MR. BURR: A portion of it.

Let me rephrase the question if that would make any difference. Are you willing to concede Mr. Watts that Exhibit 7 was designed to be an appeal not only to the School Board but an appeal to the public at large of Seward?

MR. WATTS: The public electorate.

MR. BURR: The public at large.

MR. WATTS: It was an attempt to appraise the public at large sent to the School Board that we had a situation that we would like to have remedied.

MR. BURR: Isn't it true that this document was broadcast or a substance of it was made a subject of broadcast at or about the time that this was distributed?

MR. WATTS: By radio? To my knowledge, no.

MR. BURR: But it was distributed through the mails to many people in the Seward area.

MR. WATTS: A copy yes.

MR. BURR: Simultaneously with distribution of it to the Seward School Board.

MR. WATTS: An hour or two later.

MR. BURR: So it was roughly simultaneous with your advice to the School Board. Other words distribution of this to the public about the Seward area was roughly simultaneously with the distribution of it to the Seward School Board.

MR. WATTS: The same morning.

MR. BURR: Would it not be fair that this letter was designed to be an appeal not only to the Seward School Board but to the electorate and to the people at large in Seward?

[85] MR. WATTS: Yes.

MR. BURR: In affect you were trying to impeach the Seward School Board by methods not contemplated by the statutes in the state of Alaska?

MR. WATTS: We were not trying impeach the school board.

MR. BURR: Did you not thereafter make an attempt to remove some of the members of the school board by the process which was followed by a petition for a recall election.

MR. WATTS: After several other efforts were made to reach the school board with our problems and all else had failed.

MR. BURR: Did you make any attempts to appeal to the Superintendent of Education of the State of Alaska on your grievances?

MR. WATTS: I was not secretary at that time but I'm quite sure that this letter, a copy of this letter was sent to the Commissioner of Education's office.

MR. BURR: A copy of Exhibit 7?

MR. WATTS: Yes.

MR. BURR: But you had made no previous attempt to your knowledge to carry your grievances above the Seward School Board to either the City Council or to the Commissioner of Education?

MR. WATTS: To my knowledge, my specific knowledge, I do not know of any other.

MR. BURR: I have no other questions.

MR. WALTON: I believe, according to your testimony, Mr. Watts you stated that you are a member of the grievance committee composed of yourself, Copeland, Winninghoff and Swick. Can you tell us where the persons Copeland and Winninghoff now may be?

MR. WATTS: Specifically.

MR. WALTON: Yes, do you know? Let's put it are they in Seward?

MR. WATTS: Yes I believe so.

MR. WALTON: Are they still teaching in the public school system?

MR. WATTS: Yes.

MR. WALTON: And they, as yourself were appointed to this committee by the president of the S.D.T.A., Mr. Richardson?

MR. WATTS: Yes.

MR. WALTON: And do you recall when that committee was appointed?

MR. WATTS: The committee was appointed on March 23, 1959.

[86] MR. WALTON: Was this committee created as a result of any S.D.T.A. meeting?

MR. WATTS: This committee by its name was provided for in the constitution and bylaws of the Seward District Teacher's Association as a standing committee and it had not been appointed up to that time for that year.

MR. WALTON: My question was this: Did this appointment of the committee follow any S.D.T.A. general meeting?

MR. WATTS: The appointment was not made in a meeting.

MR. WALTON: Was it caused as a result of any action taken at a meeting?

MR. WATTS: No.

MR. WALTON: There was an S.D.T.A. meeting was there not, on March 23, 1959?

MR. WATTS: No, I believe not - there was one a few days before that.

MR. WALTON: I see, and could you - Mr. Burr has required what the purpose of this grievance committee was. I don't think you've had a full opportunity to state exactly what its purpose was.

MR. WATTS: On March 23rd, two members of the faculty who had been given non-retention notices appealed to the president in writing, president of the Seward District Teacher's Association, for the Association to use their officers to petition or negotiate with the Board for their contracts. Because of this Mr. Richardson the president appointed this committee to do the negotiating with the Board.

MR. WALTON: And the two teachers in question contracts had been terminated were Svedland and Hollanbeck?

MR. WATTS: Correct.

MR. WALTON: And - incidentally Mr. Richardson has already testified. Did he at that time appear sympathetic to the purpose of the committee as you have stated it?

MR. WATTS: As far as I know he was in complete accord with it.

MR. WALTON: Did he tell you or your committee to first talk with Mr. Fabricious before proceeding to contact the Board?

MR. WATTS: To my knowledge he did not.

MR. WALTON: Did he in fact advise the committee to contact the board directly?

MR. WATTS: He appointed us individually and left us to meet to decide our course of action.

MR. WALTON: And did he understand that you were to contact the Board directly?

MR. WATTS: That, I do not know.

MR. WALTON: And, the purpose of this committee was to investigate non-retention of teachers Hollenbeck and Svedlund and not to depose Mr. Fabricious as superintendent?

[87] MR. WATTS: That is correct.

MR. WALTON: Now, let's return to the conversation with the Framptons. I believe Mr. and Mrs. Frampton have testified that you state in words to the following effect help us get rid of the superintendent. Did you say anthing such as that?

MR. WATTS: I did not.

MR. WALTON: You have testified today that the conversation took place on April 28, 1959, did it not?

MR. WATTS: Yes.

MR. WALTON: And you have testified that there was scheduled that night a meeting of the S.D.T.A.?

MR. WATTS: Correct.

MR. WALTON: And can you tell the Board what the purpose of the April 28th, 1959 S.D.T.A. meeting was?

MR. WATTS: How far back do you want me to go?

MR. WALTON: First say what the purpose of that meeting was and then if you wish to give background, do so.

MR. WATTS: The purpose of the meeting that night, it was a regular meeting, regular April meeting of the Association. There were two things, election of officers for the next year and the question of whether the Seward District Teacher's Ass'n. would continue efforts to obtain the contracts of the illegally non-retained teachers. The reason why it was so critical at this point was because going back to the time when the committee was appointed, the 23rd of March, a letter was written by this committee on the 23rd, copied that night and mailed on the 24th, as the 25th of March was the deadline for making appeals.

MR. WALTON: To whom was this letter written?

MR. WATTS: It was written to the School Board with copies to Mr. Fabricious, I do not remember whether Mr. Frampton, the principal received one or not.

MR. WALTON: What did that letter contain?

MR. WATTS: The letter quoted the law stating that there seemed to be an apparent illegality and asking the board their thinking on this matter. We mailed that letter that noon. In a few days we received a reply from the Board offering to meet with us I believe it was the following Monday night, which would be I believe the 30th of March and we met in the school board room at that time, a committee of four. And at that time we received no satisfaction from the Board.

MR. WALTON: As to this March 30th - could it be March 31st?

MR. WATTS: It could have been the 31st.

MR. WALTON: As to the meeting I take it that that was the meeting held between the Board and the S.D.T.A. committee?

[88] MR. WATTS: Correct.

MR. WALTON: And at the express invitation or acceptance by the Board?

MR. WATTS: The Board, I believe made the invitation to us as a result of our letter to them.

MR. WALTON: I see. Do you have a copy of your letter to them requesting such a meeting?

MR. WATTS: I do not believe we have one.

MR. WALTON: You suspect that the original would be in the records of the School Board file?

MR. WATTS: I would rather think so.

MR. WALTON: Incidentally in their reply to you sir, did the Board instruct the S.D.T.A. or its executive committee to first proceed through Mr. Fabricious before contacting the Board?

MR. WATTS: To my knowledge they did not. I have not seen that letter for months.

MR. WALTON: And who represented the S.D.T.A. at that meeting?

MR. WATTS: Mrs. Copeland, Mrs. Winninghoff, Mr. Swick and myself. The School Board, Mr. Fabricious and Mr. Frampton were also present.

MR. WALTON: I see. And what transpired at that meeting?

MR. WATTS: We discussed the non-retention of the teachers who had made their appeal for their contracts, the School Board stated that they did not want these teachers and they were not willing to return their contracts.

MR. WALTON: Do you recall anything in particular which any of the board members or Mr. Fabricious said on that occasion?

MR. WATTS: Yes - I remember that Mrs. Whitmore said words to this affect, that it the School Board was forced to give these contracts to those teachers that it would be very easy to fire them at a later date. It was very simple to overstaff then in the fall dismiss the extra teachers which would be the teachers they wanted to fire. At that time Mr. Fabricious stated, said Yes it's very easy to dismiss any undesirable teacher we have on our staff and all we have to do is to check if a teacher is a minute late in the mornings, fails to get a report in exactly on time or is out of the room without permission, it constitutes substantial non-compliance with the regulations.

MR. WALTON: When Mrs. Whitmore so spoke, did she appear to have the concurrence of the other Board members present?

MR. WATTS: I heard no disagreement.

MR. WALTON: Who were the Board members present on this occasion?

MR. WATTS: Mr. Howell was president, Mr. McCrea, Mr. Casey, Mr. Jeffreys and Mrs. Whitmore.

MR. WALTON: Was there anything else of any significance spoken by Mr. Fabricious or the Board Members on that occasion with respect to the teachers who had been non-retained. If not please state.

[89] MR. WATTS: I believe that's sufficient.

MR. WALTON: I take it then that the conclusion of that meeting was that the Board was not prepared to restate the four teachers in question?

MR. WATTS: State your question again please?

MR. WALTON: Was a conclusion reached by the Board at that meeting of the Board and the S.D.T.A. Committee that the teachers in question would not be reinstated?

MR. WATTS: I don't remember the exact words, but the meeting ended with the conclusion that the School Board would not change their stand on the matter of the non-retention.

MR. WALTON: And it was therefore for this reason that Mr. Richardson appointed a committee?

MR. WATTS: We were the committee - he had appointed us a week or so before.

MR. WALTON: I see yes, you were the executive committee.

MR. WATTS: That's right.

MR. WALTON: I see.

MR. WATTS: We returned our decision to the executive committee of the Seward District Teacher's Association and our special committee did not function anymore.

MR. WALTON: I see and then the next meeting of the S.D.T.A. was on April 28th. Is that correct?

MR. WATTS: Yes, but we had several executive sessions before that of the Executive Council.

MR. WALTON: Did anything transpire at those executive sessions which you feel this Board should know?

MR. WATTS: Yes.

MR. WALTON: Tell us what they were.

MR. WATTS: At the first meeting all 7 members were unanimously agreed that we should continue efforts to get the contracts returned. We wrote a letter to the National Headquarters of the N.E.A. stating our position and quoting the law and asking what was their opinion on this matter. Some time went by before we had a reply. Upon receiving that reply we had another executive meeting and in that letter the National headquarters office, our parent organization of the National Education Association said that we were clearly in the right as far as they were concerned and the law and to press for these contracts. At that meeting we wrote another letter to the School Board quoting the pertinent parts of the letter from the N.E.A. letter, asking for those contracts by the end of the week, I believe it was the 24th of April - the letter I believe was written on the 20th.

[90] MR. WALTON: At this time Mr. Watts I will hand you document, Appellants Exhibit 1, and would you please identify it?

MR. WATTS: Yes.

MR. WALTON: Would you please identify it?

MR. WATTS: This is the letter in answer from the President of the School Board to Mrs. Copeland, chairman of our Grievance Committee.

MR. WALTON: Setting up the March

MR. WATTS: March 30 or 31st.

MR. WALTON: Setting up the March 31st, 1959 as your meeting date. Night?

MR. WATTS: Yes.

MR. WALTON: Now, please identify Appellants Exhibit 2 which I hand you.

MR. WATTS: This is a letter written by the president of the Seward District Teacher's Association addressed to Mr. Fabricious, Superintendent of Schools stating it was written by Mr. Monte Richardson, signed by all of the Executive Committee of the Teacher's Association, asking for the contracts of the non-retained teachers, also quoting parts of the letter from the National NEA Headquarters stating their position in the efforts to get these contracts.

MR. WALTON: And the purpose of the April 28, 1959 meeting of the S.D.T.A. was rectify, I take it, or to seek progress which had been withheld or denied at the March 30 or March 31st meeting?

MR. WATTS: The School Board did not send a reply to this letter just mentioned from Mr. Richardson to Mr. Fabricious so after the deadline date of the 24th, we brought, it was brought up, this question of non-retention was brought up before the general assembly of the Seward District Teacher's Association in their regular meeting in April.

MR. WALTON: On April 28th, 1959?

MR. WATTS: Correct.

MR. WALTON: And it was your purpose in speaking with the Framptons to seek their approval at that meeting?

MR. WATTS: And their support in the voting we knew would take place.

MR. WALTON: And the voting precisely on what?

MR. WATTS: The question - the voting on the question of whether we would continue efforts to get these contracts back for these teachers who had appealed to us, to get their contracts for them.

MR. WALTON: And reference to words continue efforts to get their contracts, what did you refer to?

[91] MR. WATTS: I was referring to the efforts that the Grievance Committee had made with the School Board and the letter and the meeting with them and also the letter that the Seward District Teacher's Association had sent to the Superintendent asking for the contract.

MR. WALTON: Do you recall when you spoke to the Framptons whether or not you indicated to them that the meeting at which their attendance was requested was the S.D.T.A. meeting?

MR. WATTS: Yes. We all knew that it was a Seward District Teacher's Association meeting because that's the only Teacher's Association in existence at that time.

MR. WALTON: Are you sure that the Framptons understood that it was a Teacher's Association meeting that you were referring to?

MR. WATTS: I'm quite sure they understood that.

MR. WALTON: Would there have been any reason at that time for you to say such words as they have reputed to you, such as "we are going to get the Superintendent" or words to that affect.

MR. WATTS: There would have been absolutely no reason to because all we were concerned about at this time was getting the teacher's contracts.

MR. WALTON: You state that at that time that your committee did not realize that Mr. Frampton had been a party to the very things which the S.D.T.A. was objecting to. What were you referring to?

MR. WATTS: Who it was who asked that these teachers not be retained. Whether it was the principal, the superintendent or the members of the Board?

MR. WALTON: Did you subsequently ascertain that Mr. Frampton had anything to do with the non-retention of any of those teachers?

MR. WATTS: I think it has come out in what you might call evidence in hearings, or probably in statements made by various executives of the school, by what was said and what was done. I do believe that none of us any have known Mr. Frampton might have, that his opinion about the non-retention of the teachers might have been considered, but to what extent, we weren't aware of at the time.

MR. WALTON: Mr. Frampton was principal of the grade school, was he not?

MR. WATTS: Yes.

MR. WALTON: And did you subsequent to the conversation with him learn that he was instrumental in the non-retention of any of those teachers to whom we referred?

MR. WATTS: Yes.

MR. WALTON: Precisely whom?

[92] MR. WATTS: Mrs. Hollenbeck and I believe Mrs. Armstrong who was not making an effort to get her contract because she had already secured another position in the meantime.

MR. WALTON: Mr. Burr interrogated you on this point, but I would like to get this cleared up. Do you think that the Frampton's deliberately rendered false testimony at this meeting held last night or do you have any alternative explanation of their testimony.

MR. WATTS: That is a difficult thing for a person to answer because it's hard to understand another' person's mind but at our hearing last spring here, when the same question came up, I believe the record will show that Mr. Frampton and specifically Mrs. Frampton stated that they knew what I meant, that they were not quite sure of the exact words but that they knew what I meant.

MR. WALTON: If in fact, Exhibit 12 was never adopted by the Board as Regulations of the School District, would you deem yourself bound by them?

MR. WATTS: I would consider it a guide that I should try to follow.

MR. WALTON: Has anyone ever indicated to you on what occasions if any, Exhibit 12 was ever adopted by the Board as its regulations?

MR. WATTS: I have never heard or ever seen any evidence that it was adopted by the Board.

MR. WALTON: And such a request has been made now?

MR. WATTS: It has been - it has been made here repeatedly, at the last spring hearing, the same request was asked several times for the State Board of Education's Hearing Committee and the evidence was never forthcoming.

MR. WALTON: In the course of your responses to Mr. Burr's question concerning your conduct in meeting with the Board or authoring or distributing the open letter or the petition for recall, was your conduct your own private conduct or was it any way representative of any group?

MR. WATTS: In all of these actions or acts that I participated in I was acting in my capacity as a member of a group and of a group only.

MR. WALTON: At the S.D.T.A. meeting on April 28, 1959 did the group vote on the question of whether or not they should pursue to attempt to regain for the teachers in question their contracts?

MR. WATTS: The motion was made in a negative way. The motion was made to not to continue efforts to get these contracts. The vote was a vote of 11 to 12 in favor of not continuing efforts to get these contracts.

MR. WALTON: As a result of that vote what occurred if anything?

MR. WATTS: As a result of that vote the nominee candidate, or the nominating committee for the president of the next year's Seward District Teacher's Association withdrew his name from candidacy and a new president was elected from the floor. A new slate of officers were elected and I was again elected as a representative of the Executive Council. The meeting adjourned and that was the last meeting of the Seward District Teachers Association had that year.

[93] MR. WALTON: Was another Teachers Association thereafter formed?

MR. WATTS: Within 3 or 4 days, it would be the first part of May, efforts were started to affiliate with the American Federation of Teachers and at that time 18 members of the original 29 members of the Seward District Teacher's Association joined the American Federation of Teachers.

MR. WALTON: Can you please tell the Board what is the American Federation of Teachers?

MR. WATTS: The American Federation of Teachers is a federation of class room teachers and class room teachers only, affiliated with the American Federation of Labor and the CIO. Their purposes and constitution is almost identical with the National Education Associations of which the Seward District Teachers Association is an Affiliate. The American Federation of Teachers has the same goals and the same objectives but to some extent a slightly different method. The Seward District Teacher's Association and all branches of the National Education Association used their method for furthering teacher's benefits and teachers advancement, their primary method over the year has been lobbying and publication, trying to educate the public through pressure groups which are legitimate, getting legislation enacted for their benefit. The American Federation of Teachers uses the same method and also tries to get legal decisions in the State supreme courts and the United States Supreme courts whenever possible to set precedent for advancement of teachers condition.

MR. WALTON: Is the AFT a recognized respectable organization?

MR. BURR: Oh man, I object to that form of question.

MR. WALTON: Very well, withdrawn.

MR. WALTON: Who are some of the other members of the AFT whom the Board might be acquainted with. by name?

MR. WATTS: John Dewey is the father of modern public school education, has been a member while he was living for years in the American Federation of Teachers. He is an outspoken booster of them and we have his published statement in support of them as part of our literature.

MR. WALTON: Anyone else?

MR. WATTS: We have several professors who have been head of the departments of education at the Columbia University and many of the other great universities also head of it. We also have currently several members of Congress who are still at the present time members of the American Federation of Teachers. Notably,

MR. BURR: I'm going to object to this dissertation on the American Federation of Teachers. I think it's immaterial, irrelevant and wholly outside the scope of review and responsibility of this Board. I will ask that the president so instruct the witness.

MR. WALTON: Now, may I be heard on that please? I request that this witness be entitled to give the names of two prominent political figures who are [94] closely affiliated with the organization. I'm sure the Board wants all the facts.

MR. BURR: Facts, yes.

CHAIRMAN: Go ahead.

MR. WALTON: Proceed sir.

MR. WATTS: All right. Senator Douglas is a member, has been a teacher in his younger years and still an active member of the American Federation of Teachers. Mike Mansfield of Montana is a very active supporter and still at present a member of the American Federation of Teachers. That's all that come to my mind right now.

MR. WALTON: Very well. You have stated in response to Mr. Burr's question that assuming Exhibit 12 does constitute regulations of the Board, nevertheless a teacher would not be bound to follow them if they were inapplicable. Do I correctly state you sir?

MR. WATTS: That is correct.

MR. WALTON: In the Fall of, pardon me, in the spring of 1959 was paragraph 7 and paragraph 9 on pages 3 and 4 in your opinion applicable in the AFT's attempt to secure the non-retained teacher's contracts?

MR. WATTS: Can you restate your question?

MR. WALTON: In the spring, I believe you testified

that in 1959, the spring, the AFT attempted to negotiate with the Board in efforts to secure contracts for several teachers who had been terminated. Your answer sir?

MR. WATTS: We had yes.

MR. WALTON: And I ask you now, at that time did you feel, or do you now feel that paragraph 7 and 9 on pages 3 and 4 were applicable as far as the AFT's attempt to do what was concerned.

MR. WATTS: You stated two question there. You said did you feel and do you now feel. I do not. I feel that these were not, could not apply to us at that time.

MR. WALTON: Why?

MR. WATTS: Because the administrator had become a block to any efforts to reach the School Board and solve our problems, or to listen to our problems themselves with any degree of a chance of a solution to our problems.

MR. WALTON: Will you tell us exactly what you mean by that?

MR. WATTS: I can go back to the first school board, the first teacher's meeting in the Fall of 1958, the first meeting that Mr. Fabricious addressed the school when he arrived here, two months after he took over in July. I had just returned from a trip which I had been on leave for a year and the day I arrived home I found a new superintendent and the next day we had our first teachers meeting the day, either the [95] day school started or the day before and at that meeting Mr. Fabricious introduced himself to us and in the statements he made I felt some concern and so did several other teachers. He stated I am a strong forceful man and I expect to be boss. Teachers will not be permitted to talk to School Board members.

MR. WALTON: Can you think of any other instances when Mr. Fabricious had attempted to block the efforts of teachers to contact the board?

MR. WATTS: Well, I had no specific difficulty or knowledge of anything until another meeting held in January, about 4 months or 4½ months after school had started. Mr. Fabricious called a Grade School Faculty meeting.

MR. WALTON: What year, what month?

MR. WATTS: It was in January of 1959 of the Grade School Faculty and on that day I think there were about 18 or 19 teachers present and 17 of them belonged to the Seward District Teachers Association. Whe he came in he had a letter I believe it was from the Seward School Board, evidently evidence of authority for speaking to these teachers about a particular problem. And then after these introductory remarks, he made this statement, you the teachers association have started a scandal campaign to try to get rid of me. You are trying to force the School Board to buy back my contract but I have a three year contract and I expect to be here long after the most of the rest of you have gone. In the spring when contracts are let I'll remember who my enemies are. And then he paused a moment and continued - it is unethical and unprofessional for two or more teachers

MR. BURR: I want to object at this time if you reciting a letter I should think that if you had it exhibit

MR. WALTON: No, this is a public address, the witness is just, this is a speech by Mr. Fabricious before a Grade School Faculty meeting in January of 1959.

MR. WATTS: I will start with the second phrase, after a short pause after his first one he stated - it is unethical and unprofessional for two or more teachers to talk together in the halls and it will not be permitted. If you wish to discuss this matter further I will be downstairs by the fountain and he walked out.

MR. WALTON: Was there any other indications of futility in any attempts to contact Mr. Fabricious directly on behalf of teachers problems?

MR. WATTS: My problem such as it was started probably in I would say in February or March - it was not a specific problem to begin with - it was a question of whether my travel abroad would be counted as educational travel. Now at this time I had recently had my state certificate teaching in any high school had been renewed for 5 more years which takes it up to 1963. Now the State Law

states that this law was written in 1954 I believe, which states that teachers to continue the validity of their certificates they shall gain I believe it's 6 hours [96] of credit every six years, or maybe it's 5 hours of credit, I don't remember that law on that, 5 or 6 hours of credit in every 6 years to continue the validity of their certificate. The law also stated and the law of 1957 stated that if a teacher had a valid certificate in existence in 1957 that the state would renew that certificate one term the length of the certificate and mine was a 5 year certificate. Mine was renewed in 1958 when I came back from my trip so that was all clear and legal. This question has been quite a problem, led to lots of discussion, to me it wasn't that important. The question came up whether I could get any credit, educational, credit for educational travel. Now at this time before I left and it was when Mr. Carlson was superintendent, we discussed the problem, there was nothing official about it.

MR. WALTON: Let me. Did you ever have occasion to talk to Mr. Fabricious about this problem?

MR. WATTS: Yes.

MR. WALTON: When and where?

MR. WATTS: The first time I believe it was mentioned was in Mr. Frampton's office in the Grade School, an informal discussion. He was afraid that since, in February I believe, he brought out a notice, a proper notice from the School Board that there were going to be some additional requirements, probably 6 hours credit if you hadn't gotten 6 hours credit since 1954 and I felt that since I had had no earlier notice and I was greatly in debt because of my trip and the State Board did not have any regulations pertaining to education travel at that time, that I should have some time to make up this work. I had thought in terms of writing a paper or doing some correspondence. A month or so later another requirement came out saying that 4 of those 6 hours would have to be in resident study, which would mean * * * have to * * * that I would have to go to some school and resident to 4 of those 6 hours of credit.

I talked it over with Mr. Fabricious I believe on 2 or 3 occasions. Then on April 3rd I went to his office to discuss it further with him.

MR. WALTON: Now, specifically what was it that you requested from Mr. Fabricious?

MR. WATTS: I was interested in having a years extension of time.

MR. WALTON: To fulfill these extra credits requirements?

MR. WATTS: To fulfill the extra credit requirements or to be able to write a paper for some university.

MR. WALTON: What happened on this April 3rd meeting?

MR. WATTS: On the April 3rd meeting when we were discussing this Mr. Fabricious said if he was thinking of the fact that I was quite a bit in debt for the purpose of my trip, he said that if he made a hardship case exception in my case, he would probably have to do it for other people the same thing. And I stated I felt that if they had legitimate reasons they should be given an extension of time casue it was rather short notice - 2 or 3 months before school was out to make plans for an extensive summer school course and he made this statement to me, he said "I have gotten rid of a third of the teachers this year and I [97] expect and I'll have to get rid of half of the teachers next year. There's too much deadwood in this system." That was the end of our discussion. I thought it over for about a week and then I went to him and asked if I could have a hearing before the School Board concerning a year's extension of time and he said yes, it was my legal right, but that he and the School Board had already made up their minds about me, so as a result of that I went to 11 people and asked them to come to my hearing whenever the date would be set for it. And the date was set May the 8th, 1959.

MR. WALTON: And at that meeting what determination was made, if any, of that request?

MR. WATTS: At this meeting on May the 8th, which was an open meeting held in this room at 8 o'clock on Friday night, since the Seward District Teacher's Association had dropped the non-retention appeal and also inactive for the rest of the year, the new Teacher's Union, on behalf of all of these teachers who wanted an extension of time, felt we needed an extension of time for summer school, were to present our case for an extension of time and also we took up the case of the non-retained teachers who wanted their contracts.

MR. WALTON: And what happened with respect to the request for extension?

MR. WATTS: All right. We had an attorney here and at this open meeting the Seward School Board voted to return the contracts to these teachers in question and also to give all of us a years extension of time to get our credits.

MR. WALTON: Let me go back to this April 28th meeting with the Framptons. Did you have occasion immediately thereafter to speak with Mr. Fabricious?

MR. WATTS: The very next morning, the morning after the vote in the Teacher's Association in which the non-retention cases were dropped by the Seward District Teacher's Association, Mr. Frampton called me from my class, I had a class seeing some visual film, called to his office and Mr. Fabricious was there and in the presence of Mr. Frampton he told me that he had heard that I was out trying to solicit support to get him fired, and that was an unethical, unprofessional, unethical, unprofessional and despicable thing to do and he was going to fight me in every way he could and he was going to get me in every way he could.

MR. WALTON: Do you remember what his words were - can you quote his words to the best of your recollection?

MR. WATTS: I remember that one statement in which he said I am going to fight you in any way I can and I am going to get you in any way I can. Then I asked him, still thinking at this time that he was talking about my efforts to get people to come to my hearing but I thought he was

referring to that, I asked him I said I did not know that I was a trouble maker, and he said no you do not have a reputation of being a trouble maker. Then I asked him about the fact that my education travel was of any value to me and he said yes, it was probably a big value to me as a teacher. I asked him if my certificate which was good for four more years was sufficient and he said it satisfies the State requirements but it does not satisfy the local school board requirements. That was the end of our discussion.

[98] MR. WALTON: Much point has been made of the opinion of the S.D.T.A. and the AFT that the non-retention of teachers Hollenbeck, Svedlund, Brown and Armstrong had been illegal. Was that opinion derived on the basis of any professional guidance.

MR. WATTS: When the Seward District Teachers Association was still functioning the legal counsel of the National Education Association advised us that these teachers had been according to law illegally non-retained and to make all efforts to get these contracts.

MR. WALTON: It is in reference to that opinion which is found in Appellants Exhibits here, is it not?

MR. WATTS: Yes.

MR. WALTON: And incidentally did the Board ever concur in that opinion, impliedly or expressly thereafter? I'll withdraw the question. What action did the Board ultimately make with respect to the non-retained teachers contracts?

MR. WATTS: On May the 8th they voted to return the contracts to these teachers in question who wanted their contract because they were illegally non-retained.

MR. WALTON: Now this May the 8th meeting was held as a result of what persons, and what associations were represented at the May 8th meeting.

MR. WATTS: The 18 members of the American Federation of Teachers presented their case at this meeting.

MR. WALTON: Were they represented by anyone in particular?

MR. WATTS: Yes they had legal counsel, Pat Ervine from Anchorage.

MR. WALTON: And were they represented by any particular designated spokesman?

MR. WATTS: I spoke briefly on the matter of the year's extension of time and I believe there were a few comments from various people in the audience who were concerned.

MR. WALTON: And did the Board on that occasion recognize you as representative of the AFT and Mr. Ervine attorney for AFT?

MR. WATTS: As far as I know they did because there was no protest made at this time, there seemed to be harmony on that point.

MR. WALTON: The Board didn't object that this matter should first be processed through the Superintendent?

MR. WATTS: No protest was made that I know of.

MR. WALTON: And thereafter I mean subsequent to May 8th, did the AFT attempt to arrange a meeting with the Board. I believe you testified they attempted to arrange a May 16th meeting. Did they not?

MR. WATTS: Yes.

[99] MR. WALTON: And that failed?

MR. WATTS: Yes.

MR. WALTON: And was any subsequent meeting held at which the Board and the AFT were represented?

MR. WATTS: After our efforts in the open letter to the School Board of May 18th was published, in that letter we asked for a meeting on the 19th, either the 19th or 20th, and we received a letter in reply from the Board saying they could set up a meeting maybe I believe it was the 26th of May, would be the next week. And,

MR. WALTON: Incidentally, in that letter did they ask you to meet with the Superintendent on the 26th or did they ask you to meet with the Board?

MR. WATTS: Meet with the Board.

MR. WALTON: And, did you meet with the Board on the 26th?

MR. WATTS: We did not meet with the Board on the 26th. We met with them on the 28th.

MR. WALTON: Mr. Burr, – just a minute –

MR. BURR: I would request both documents be admitted.

MR. WALTON: Would you please tell the Board what Appellants Exhibit 3 is?

MR. WATTS: Appellants Exhibit No. 3 is a letter from the Seward Public Schools signed by Mr. Tom Howell, written to Mr. Walter Blue, president of the American Federation of Teachers, in which

MR. BURR: We have no objection - you can offer this exhibit.

MR. WALTON: I'd like to have it in the record.

MR. BURR: It is in the record as an exhibit if it's introduced.

MR. WALTON: I'd like to have this gentleman tell us briefly what it is.

MR. BURR: I object to his reciting a letter that he didn't even sign.

MR. WALTON: I'm not asking him to recite it - I'm only asking him to identify it, and I think it's imperative for the State Department should they

MR. BURR: It'll be an exhibit in evidence - I'm only trying to abbreviate the proceedings.

MR. WALTON: It would have been identified by now if you hadn't objected. I'm merely asking the witness to identify it.

MR. WATTS: It is a letter, as I have so stated, written to Mr. Blue, president of the American Federation of Teachers from the president of the Seward School Board, discussing the

[100] MR. BURR: No, No, there you have accomplished your end - If you want to go through and read all these exhibits in the record I'll be happy to do it, Mr. Walton - all of them - I have no objections perhaps it would be better.

MR. WALTON: Mr. Burr, I don't think you're testifying.

MR. BURR: I'm requesting

MR. WALTON: You wish to make a formal request -

you're certainly entitled to do so. After a discussion between counsel - Mr. Walton resumed questioning and will you please identify Appellants Exhibit No. 4?

MR. WATTS: This is a letter dated May the 20th to Mr. Tom Howell, president of the Seward School Board from Mr. Walter B. Blue.

MR. BURR: No objections.

MR. CASEY: We will recess until 1:15 PM for lunch.

MR. CASEY: This is now the reconvened meeting - proceed.

MR. WALTON: I believe Mr. Watts that you last testified that the Board had indicated it willingness to meet with the AFT on May 26th - did you so testify?

MR. WATTS: Yes.

MR. WALTON: And I believe my next question was, was a meeting held pursuant to that time?

MR. WATTS: On, or before May the 26th, negotiations were resumed for another meeting and this meeting was finally set up for the 28th and all parties would be available for that meeting.

MR. WALTON: And was a meeting held on May 28th, 1959?

MR. WATTS: A meeting was held at that date in the Seward School Board chambers.

MR. WALTON: Who was present?

MR. WATTS: The School Board and Mr. Fabricious and myself.

MR. WALTON: And did you appear in any represented capacity?

MR. WATTS: I appeared at that time as secretary of the American Federation of Teachers and as their representative to petition for consideration of our problems that had been bothering us for so long.

MR. WALTON: I understand - the purpose of the May 28th meeting was to explore the matters set forth in the open letter of Exhibit 7?

MR. WATTS: That's right and all of our problems generally, specifically them.

MR. WALTON: Was your representated capacity acknowledged by the Board on that occasion?

[101] MR. WATTS: At the beginning I believe Mr. Casey questioned us being there as a union member or the union, or the teacher's union, and also whether I was secretary of the teacher's union, but Mr. Howell because of previous correspondence and talks, negotiations with the American Federation of Teachers, was able to verify that as far as he knew I was the secretary.

MR. WALTON: And what transpired in the course of this meeting? - with respect to the matters contained in the open letter?

MR. WATTS: All right - I was given the floor as soon as I was recognized and I asked that better relations be established between the administration and the faculty. Also, that all of these questions be considered on the ten points of the open letter to the School Board - that Mr. Swick's situation and that Mr. Jerry Smith's situation about their positions being declared vacant, or their particular assignment being declared vacant or abolished, that they be given reconsideration on their problems. Also, that in the future, freshmen teachers, or all teachers needing help should get help from the administration and from principals and supervisors to help them along the first year. The other questions or statements that I asked for consideration was that any teacher in the future who was being considered for non-retention be given notice someway or another early in the year so that person could make other plans and resign for the next year instead of having to wait until they get notice of non-retention with no previous information or knowledge that they are going to get it.

MR. WALTON: What response did you receive from the Board on those matters?

MR. WATTS: I was told, I do not know who stated it, that they were interested in harmony between the School Board, the administration and the faculty and they would certainly see to it that any teacher who was being in the future who was being considered for non-retention would be given adequate notice ahead of time.

MR. WALTON: Did anything further transpire with respect to the matters set forth in the open letter?

MR. WATTS: There was a great deal of discussion about the, particularly myself to start with, that they had investigated my past and that they had found that my record was very clean and that I was not known as a trouble maker and that they were very surprised to know that I had fallen under the influence of a bad teacher and had been corrupted. I said that I did not know of any teachers on the faculty who were trouble makers and they said it was a new teacher.

MR. WALTON: Generally, was the meeting satisfactory as far as the AFT was concerned, or not?

MR. WATTS: The Meeting was a failure as far as we were concerned because after almost two hours of tape recording of this meeting at the very end when it was quite obvious that we were not going to make any headway, just about the time the tape ran out, Mr. McRae said to me, he said, Jimmy you and all the rest of your trouble makers ought to resign and get out so we can organize a good school. Then, someone noticed that the tape recorder evidentally had run out of tape and there was a little discussion over that and I was waiting to be dismissed and Mr. Fabricious stated Watts you and all the rest of your union members ought to have your throats cut.

[102] MR. WALTON: Was there any further conversation between you and Mr. Fabricious on that occasion?

MR. WATTS: No, I was dismissed right after that.

MR. WALTON: And then you left?

MR. WATTS: I left.

MR. WALTON: And, what was the next event that occurred in this program of unpleasantries?

MR. WATTS: I reported back to the Executive committee of the American Federation of Teachers and on the next day, the 29th of May, we started recall action against the School Board.

MR. WALTON: Specifically, you say, we, we is who?

MR. WATTS: We is the American Federation of Teachers.

MR. WALTON: And how did you start recall action?

MR. WATTS: We started a petition with a spokesman speaking to two branches of the Longshore Union

MR. WALTON: Now, do you know whether or not a formal decision to circulate a recall petition was ever entered into by the AFT as a group?

MR. WATTS: Oh yes.

MR. WALTON: Do you recall when this decision was made?

MR. WATTS: After our unsuccessful effort to meet with the Board the week that the open letter to the School Board came out on May 18th, we did not meet that week, on Saturday the 23rd an effort was made to reach one or two members of the School Board to see if they could talk with us and they declined to do so. On Sunday, the 24th, the American Federation of Teachers met and voted to make one more effort to have a meeting with the School Board and if that failed to initiate, then we would initiate recall action.

MR. WALTON: It was pursuant to that decision that recall action was initiated?

MR. WATTS: Yes.

MR. WALTON: Do you know when the school year ended in 1959?

MR. WATTS: It ended the 15th of May, 1959.

MR. WALTON: Do you recall the day it started?

MR. WATTS: It was the first day after Labor Day in September, 1958, the first Tuesday, I think it must have been the 6th or 8th of Sept. 1959, when school started.

MR. WALTON: You mean 1958, don't you?

MR. WATTS: Pardon me, 1958, yes. It would have been the second. This is the year [103] it started the first week -

MR. WALTON: Then can you state for the record briefly what was the history of the action seeking recall of the Board Members?

MR. WATTS: The sequence of events that led to the recall of the effort of the School Board members started - did

not start as a recall effort at all - it started strictly as an effort to get the teacher's contracts by the Seward District Teacher's Association.

MR. WALTON: Well, now, with respect to this petition for recall which I believe is in evidence, do you know what persons circulated it? Can you identify some of the people who circulated it?

MR. WATTS: Yes, I can.

MR. WALTON: Please do.

MR. WATTS: I may in error, but I believe Mr. Ralph Rider, I believe Mrs. Donna Kownlaki, I do not recall whether

MR. WALTON: Let me ask you whether these persons circulated it? Mr. Earl Trevethan, if you know?

MR. WATTS: Yes.

MR. WALTON: Miss or Mrs. Vida Drown?

MR. WATTS: Yes.

MR. WALTON: Miss or Mrs. Betty Reed?

MR. WATTS: Yes.

MR. WALTON: Mr. James MacSwain?

MR. WATTS: Yes.

MR. WALTON: Mr. M. A. Wright?

MR. WATTS: Yes.

MR. WALTON: Were all these persons teachers?

MR. WATTS: No.

MR. WALTON: Which ones were?

MR. WATTS: None of those mentioned.

MR. WALTON: Do you know how many signatures were obtained on that petition, approximately?

MR. WATTS: On all pages of the petition, approximately 300. There were about 260 submitted.

[104] MR. WALTON: And, after the petition was lodged with the City Council, then what happened briefly with respect to the history of the recall action?

MR. WATTS: After this petition was considered sufficient in numbers to us, we submitted it to the City Clerk for certification, and at that time, they had 10 days in which to check it over, and during that time, the four members

of the School Board, who were under recall effort, issued a 1 page statement to many or most of the signers of this petition, requesting them to take their names off the recall petition.

MR. WALTON: I wish to mark another Appellants Exhibit - would it be number 5? Thank you. Would you please identify Appellants Exhibit No. 5 and state whether or not this is the document to which you were referring last?

MR. WATTS: Yes, this is the document to which I referred.

MR. WALTON: Do you know whether or not any persons who received a copy of that letter thereafter withdrew from the petition their signature?

MR. WATTS: I do know that there were 18 signatures removed either as a result of this document or the notice on the regular news broadcast on the radio for a day or two slightly later than this date here.

MR. WALTON: What was the broadcast notice about?

MR. WATTS: It came from the office of the Acting City Manager to the radio station for regular news broadcast of Seward city news in which the notice stated that anyone who wanted to take their name or remove their name from the recall petition might do so by writing a letter to the City Clerk inasmuch as the recall petitions at that time were unavailable, they were in the hands of the City Attorney in Anchorage.

MR. WALTON: May I ask you to briefly state what the history of the recall action was?

MR. WATTS: After a reasonable time, the petition was certified and checked by attorney, presented at a Council meeting in June, the latter part of June, to the for the City Council to take action on the election or whatever other action they deemed proper. At that time the City Attorney, Mr. Buckal, was present, and two attorneys representing the School Board or School Board members.

MR. WALTON: Now, Mr. Watts. let me ask you I don't

want you to go into such great details, but state in 4 or 5 sentences, what happened to the recall action to date.

MR. WATTS: All right. The School, the City Council accepted the petition, but did not order a date set for the on August the 27th and at that time the decision was agency of Mr. Blue, its president, appealed I believe that's the term, to file, I don't know what the term would be, with the Superior Court, a petition to order the election to be held. A hearing was held for the court, in Anchorage on August the 27th and at that time the decision was rendered that the recall petition, the recall law used this time did not apply to local School Board members, that they were not municipal officials. After that decision, it was appealed by the AFT to the State Supreme Court which wasn't actually sitting yet, and until they were able to get it on the docket it was not, their decision was handed down [105] sometimes this fall and the decision was that the recall law as we used it, did apply.

MR. WALTON: And therefore, what?

MR. WATTS: And ordered a election.

MR. WALTON: And ordered an election?

MR. WATTS: They did not order an election. They ordered - an election was ordered and held.

MR. WALTON: And when was the election held?

MR. WATTS: It was held at the regular time I believe Oct. 4th.

MR. WALTON: Do you know approximately how many votes were cast in the recent recall election?

MR. WATTS: I believe it was around 600.

MR. WALTON: Briefly what were the results of the recall election?

MR. WATTS: One member being up for recall, their term was over, Mrs. Whitmore's term was over this fall and there was no point in pushing that case, so three members of the board were up for recall and all three of them were voted back into office.

MR. WALTON: And their names are what?

MR. WATTS: Mr. Casey, Mr. Jeffrey and Mr. McRae.

MR. WALTON: And approximately what percentage of the votes.

MR. WATTS: About 60 percent of the vote.

MR. WALTON: And incidently, did these gentlemen, Mr. Casey, Mr. McRae and Mr. Jeffrey publicly participate in campaigning?

MR. WATTS: Mr. Jeffrey had moved to Seattle and he was not in the campaign, and Mr. McRae and Mr. Casey both made speeches took active parts in the campaigns.

MR. WALTON: I would like to clear up just one last point in cross examination. Can you tell the Board when the AFT was formed in Seward, Alaska?

MR. WATTS: The American Federation of Teachers was formed, I believe the official date is May the 4th, 1959 and on May the 8th, they had their first meeting with the School Board.

MR. WALTON: Is the AFT like the S.D.T.A. open to administrators as well as teachers?

MR. WATTS: No, the American Federation of Teachers is strictly a classroom teacher's organization and is not a company union.

MR. WALTON: Did this fact have anything to do with its formation for the purpose of its organization?

[106] MR. WATTS: It had a great deal to do with its organization. The National Education Association is comprised of several branches, by far the largest branch is the classroom teachers association and the district teachers association which will include administrators and supervisors. The classroom teachers association branch does not include administrators, only classroom teachers. And there is another smaller branch made up exclusively of administrators. This Seward District Teacher's Association had administrators in it.

MR. WALTON: And I take it the purpose for forming the AFT was to enable certain teachers who were dissatis- with the SDTA vote to proceed through organization to attempt to secure teachers contracts for the four non-retained teachers in the spring of 1959?

MR. WATTS: That is exactly right.

MR. WALTON: No other questions.

MR. BURR: You mentioned the objectives of the AFT included somewhat similar objectives that the AFL-CIO parent organizations had. Is that true?

MR. WATTS: Only that they believe in union support and I'm not sure on this, but I assume in collective bargaining.

MR. BURR: And you further stated that you believed that included all of the legal, what are recognized as legal legal methods of enforcing these bargaining processes.

MR. WATTS: No it does not, necessarily.

MR. BURR: Well, what portion of those processes would you say it does not include?

MR. WATTS: I don't know all of the aspects of it, because we are a new organization, it takes a long time to learn these things, but the major purpose as I stated this morning, is the method by which we attain our objectives, which are similar to the NEA, and that is that we try to get legal decisions, wherever possible.

MR. BURR: Let me rephase the question perhaps. Would you say that the overall objectives of this branch of the Teachers Association branch of the American Federation, the AFL-CIO, would you say that the objectives of the teachers Local roughly coincides with the overall objectives of the objective of unionism as expounded by some of our more known, widely know labor leaders, such as George Meany, Walter Reuther and people like that?

MR. WATTS: The AFT was organized strictly for teachers and teachers purposes which is to secure better conditions for teachers and to protect their interests and rights, as well as raise the standards of education in general. They are only affiliated with the AFL-CIO with relationship to having support for voting strength, when national elections come up, national figures.

MR. BURR: As you're not saying in effect that the objectives, the overall objectives of the AFT are in every case identical with more famous people like George Meany, Wal-

ter Reuther and James Hoffa and Mr. Bridges and so forth?

MR. WATTS: I'm a school teacher I can say that I happen to be I'm not an expert on the union, I have never been an active member in unions before, I've had a carpenter's card but have never been affiliated with them before and I [107] only know mostly what I, pardon the expression, read in the papers or hear on the radio and in national magazines.

MR. BURR: Well, do you consider it a legal objective since you are talking of wanting to keep it in the bounds of the law, do you consider it a legal objective of the American Federation of Teachers to take upon themselves the responsibility of intitiating and supporting a campaign before the public to bring to the attention of the electorate, items of criticism of the school board administration, without first exhausting every reasonable effort to administratively determine those grievances?

MR. WATTS: Are you referring to the open letter to the School Board?

MR. BURR: Yes sir.

MR. WATTS: I feel that we had exhausted every effort, we had made 5 efforts and were unable to reach any sort of a, or even a reasonable meeting with the Board of this matter.

MR. BURR: You had made no appeal prior to the 28th of May of 1959, to the Commissioner of Education on those grievances, had you?

MR. WATTS: I believe a copy of the open letter to the school board was mailed to him on or about the 18th or 19th of May.

MR. BURR: But you had not prior to that time appealed these grievances, so to speak, to him, the Commissioner of Education?

MR. WATTS: Not to my knowledge.

MR. BURR: How long have you been teaching, Mr. Watts?

MR. WATTS: Twelve years.

MR. BURR: And what degree do you hold?

MR. WATTS: A Bachelor or Arts degree.

MR. BURR: How much graduate time do you have - how many graduate hours? Credits?

MR. WATTS: I actually don't know right now - I have some from the University of Alaska just recently, this last summer, but I have some from the University of Kansas, some from mostly from the University of Washington, and I have done quite a bit of study in affiliate work with the University of Washington which has no credit with it, none of it has been in the field of education.

MR. BURR: You have a Bachelor of Arts degree?

MR. WATTS: Yes.

MR. BURR: Where's it from?

MR. WATTS: Southwestern College, Winfield, Kansas.

MR. BURR: Winfield?

MR. WATTS: Winfield, Kansas.

[108] MR. BURR: Is that an accredited school?

MR. WATTS: Completely yes - North Central Accrediting Association.

MR. BURR: Was it at the time that you went there?

MR. WATTS: It certainly was.

MR. BURR: Once again, how many hours, approximately, do you know approximately how many hours of graduate time you have?

MR. WATTS: I can't say right now, it's been a long time.

MR. BURR: Well, would it be ten, fifteen or twenty?

MR. WATTS: Well, ten would be closer to it, I think.

MR. BURR: What are the number of hours required for a Master's degree elgibility?

MR. WATTS: Semester hours would be around 30, approximate.

MR. BURR: In the normal course of events how many years does it take if the teacher is steadily engaged to obtain the graduate hours? I recognize that's a difficult question, but is there in your opinion, any given amount of time that a teacher would normally progress and obtain the required number of hours?

MR. WATTS: It depends largely on how much of a professional teacher a teacher is. I have been in the profession three or 4 times and this last time I've been in the longest.

MR. BURR: Oh, I see. What period of time have you been in the last?

MR. WATTS: Five - seven years.

MR. BURR: Seven years.

MR. WATTS: Yes, here in Seward.

MR. BURR: I notice on the bill of - on this open letter, Exhibit 7 is it, on this open letter you have brought to the attention number 1, item number 1, the alleged illegal non-retention of three teachers, but as I read the paragraph, paragraph number 1, it also reflects that the Board saw fit to correct apparently what was a departure from the teachers tenure law. Is that correct?

MR. WATTS: Item 1?

MR. BURR: Yes.

MR. WATTS: Could you state your question again, since I've looked at it, please?

MR. BURR: The question was the School Board itself took remedial action on concerning the alleged unlawful non-retention on their own, of their own volition the distribution of the letter?

MR. WATTS: Yes.

[109] MR. BURR: Well, what did you hope to accomplish by reciting the alleged illegal non-retention, if there had been corrective action taken by the Board? What did you hope to attain by publicizing this item to the public of Seward? What was your objective?

MR. WATTS: We were trying to remind the School Board that these problems had come up and were very serious problems, we had a great deal of difficulty in resolving.

MR. BURR: But those problems had, this problem in particularly had already theretofore been solved, had it not?

MR. WATTS: I think to a large measure, yes.

MR. BURR: Well, what did you hope to accomplish by publicizing this item to the public of Seward? Were you

attempting to instigate this Board or bring them to public disgrace?

MR. WATTS: We were trying to get the Board to meet with us and to consider all of our problems.

MR. BURR: Did you think by publicizing this to the public of Seward that you would be in a better position to force the Board to meet with you?

MR. WATTS: We felt that all other efforts had failed.

MR. BURR: Did you want to talk with the Board about the alleged unlawful non-retention when that had already been corrected?

MR. WATTS: We would have been happy to talk with them at more length with them, yes.

MR. BURR: Well, was there anything at that point that could be done that had not already been done as the 28th or 18th of May, 1959? The contracts had been restored, had they not?

MR. WATTS: Yes, but the contracts as I understood the meaning of the meeting in this room on May the 8th that the contracts were given, were returned reluctantly.

MR. BURR: They were returned, Mr. Watts?

MR. WATTS: Yes, reluctantly.

MR. BURR: They were returned?

MR. WATTS: Yes correct.

MR. BURR: Well, is there anything more that the Board could than restore the contract?

MR. WATTS: We wanted to go into this and discuss the reasons for it. We had most of the bill of particulars ready, not written like ready, to present to the Board on May the 8th if the Board had not given the contracts back and they gave the contracts back we were ready to let the matter rest until certain things came up the next week that showed us that the situation was not cleared up.

MR. BURR: Well, my original question was as of the 18th of May when you distributed Exhibit 7 in and about the town of Seward there was nothing more that need [110] be done that should be done by the Board to correct what you contended was a departure from the Teacher Tenure Law with regard to paragraph 1 of this exhibit?

MR. WATTS: We felt that this matter should be gone into a great deal more because we did not go into specific things at the open hearing on, school board, on May the 8th, because we did not want at that time to make a public hassle and if we could get accord, agreement from the Board without displaying all of these things.

MR. BURR: What were you seeking from the Board, Mr. Watts - a categorical promise that they wouldn't serve notice of non-retention at any future date?

MR. WATTS: No. What we wanted was they would use proper, legal, ethical methods to do so.

MR. BURR: They recognized their departure from the Teacher Tenure Law by virtue of their tendering the contracts, did they not? Did they not make their amends by tendering the contracts back to the three individuals involved?

MR. WATTS: Technically, yes.

MR. BURR: Allright, technically, then what did you technically hope to accomplish by publizing what appears to be an act of illegality to the public of Seward on the 18th of May after corrective action had been taken, if it was not to bring this Board into public digrace and the Superintendent of your schools?

MR. WATTS: The fact that the Board did not meet with us or make any effort to meet with us the following week after a new set of situations developed, in which we wanted to meet on May the 16th and they refused to meet with us except for one member as an individual met with us and heard our bill of particulars from beginning to end, not as published here but as written up otherwise. We felt that we had not been dealt fairly with and that the problem had only technically been taken care of in that one situation.

MR. BURR: Mr. Watts you have identified several times the exhibit which appears to be the Seward School Board Regulations - here, exhibit 12, you have indicated several time that you were familiar with this document, whatever it is, as of the early spring, 1959 and that you considered your-

self bound insofar as there was a remedy provided for in these regulations -

MR. WATTS: As as long as it seemed to be workable, yes.

MR. BURR: Well, now did you at any time prior to the 18th of May, 1959, make any demand on the School Board or any official in the School System to prove to you that this was binding on you in every respect?

MR. WATTS: I'm sure I didn't make any effort to do so.

MR. BURR: Thank you. You mentioned a while ago under cross examination by your counsel that Mr. Fabricious was reported to have made a statemtnt to you that he was disappointed that you had associated yourself with an individual whose reputation left something to be desired, or words to that effect.

MR. WATTS: Yes.

MR. BURR: A troublemaker, in other words. Did he make reference to any particular [111] invidual?

MR. WATTS: I believe he did - he did not name him, the name was never mentioned.

MR. BURR: Was he referring to Mr. Watts, I mean, Mr. Blue, or perhaps to Mr. Swick?

MR. WATTS: It's a matter of a strong surmise on my part that it was Mr. Swick?

MR. BURR: Do you know whether or not that what he was suggesting or insinuating, assuming that he said this, was groundless or had any merits whatsoever?

MR. WATTS: It came out I believe during the course of the meeting that they had investigated this person and had received a letter from some place that he had taught previously in which the evidence in the letter, or a statement in the letter was so strong that after the first paragraph or so, that someone on the Board asked that that letter be locked up in the files because it was not the kind of letter that they wanted to hear.

MR. BURR: I should like to have this Exhibit marked as Board's Exhibit 15 for identification only. We have no

objections to letting Mr. Swick read that either. I hand you this letter and ask you if that's the letter you made reference to - Exhibit 15?

MR. WATTS: Evidently, it is.

MR. BURR: Well, having read that letter, Mr. Watts, would you say that the statements, assuming that Mr. Fabricius made such a statement - I believe Mr. Jeffrey was referring to the letter.

MR. BURR: Oh, I see, well, assuming that Mr. Jeffrey made a statement such as which you said he did, would you consider his statement to be an absolute unfounded declaration, or would there be something to base on, to base the comment upon?

MR. WATTS: I would think they would want more evidence than that to make a valued judgment that might affect a professional person. I had no way of knowing what was in that letter.

MR. BURR: I'll request that this Exhibit go forward as an exhibit marked only for identification, I don't have any reason for it in this case.

MR. WATTS: Mr. Burr, is it in order for me to clarify a statement made previously, or do I have to

MR. BURR: A statement or a question that I asked you?

MR. WATTS: Yes, and I stated and answer and I don't think I made it clear.

MR. BURR: What was the question?

MR. WATTS: It's a matter on educational qualifications.

MR. BURR: Of yourself or some other?

[112] MR. WATTS: Yes, myself.

MR. BURR: Yes, go right ahead.

MR. WATTS: Allright, we were talking about my educational background, I stated that I had attended the University of Kansas - this is personal reasons. I was in school in the fall and I did quite a bit of my work, I was taking some history courses and some geological courses, and my, I became so ill I had to quit school around the middle of the year, and I left and I came to Alaska not long after and I find I don't

have chronical asthma in Alaska and that's one reason why I'm living here now. I can't live in the middle west and so some of my work at the University of Kansas was not completed for health reasons and would like that for the record.

MR. BURR: I didn't mean to insinuate that you were evicted from any school. If I did, I apologize.

MR. WATTS: No, you didn't.

MR. BURR: Well, having read the bill of particulars, the bill of particulars in the open letter, Mr. Watts, Exhibit 7, can you state at this time that each and every item listed on that document was true in every respect to the best of your knowledge and belief as of the 18th of May?

MR. WATTS: In general, yes.

MR. BURR: You've not changed your mind since the 18th of May, 1959 as to any of these items?

MR. WATTS: Not to any extent, no.

MR. BURR: Well, have you to some extent?

MR. WATTS: I can't say specifically - I would have to analyze each one and go over the evidence carefully with all the evidence and knowledge that I would have at my hand, but in general, I don't see any discrepancies.

MR. BURR: That's all I have.

MR. WALTON: Mr. Watts, on May 8th, the School Board apparently elected to reinstate or to rejuvanate the teacher's contracts which earlier they had terminated, correct? Do you know whether or not the School Board ever did issue these contracts again or issue new contracts to those same non-retained teachers?

MR. WATTS: I don't know all of the specific details, 100%, I believe that two of the teachers received their contracts or an offer to a contract, which would be good faith, I assume on that point. One was given I think within a matter of a few days or a week or so, and the other was sometime quite a bit later. I believe after the person had already obtained a position somewhere else, or had

MR. WALTON: By quite a bit, you mean when?

MR. WATTS: Oh, maybe in June, I believe, maybe.

MR. WALTON: Mr., you have been asked why was the

open letter circulated and why was item 1 included in the open letter, in light of the Board's retraction on [113] May 8th and I believe you stated we wanted to discuss the reasons for the non-retentions. By that, could you explain more fully what you meant?

MR. WATTS: On May the 8th, reasons and motives were not gone into to any extent at all, or maybe not at all, it was the legal technicality involved entirely at that hearing. The next week, two more teachers ran into difficulty in the matter of their contract.

MR. WALTON: Who were they?

MR. WATTS: Mr. Jerry Smith, and his, I'm not sure of the exact terminology, something to the fact because of a fund deficiency or something of the sort, his position in the high school was abolished. I don't know his subjects, but I believe he was teaching Latin, I don't know whether it was Latin, or some other subject like that, and he was offered a position, I believe, a position somewhere in the grades, somewhere in the lower grades. He was a high school teacher, he felt himself to be a highschool teacher and he did not want to take what he considered a demotion. That was what comes under the heading of unreasonable assignment.

MR. WALTON: And who is the other teacher?

MR. WATTS: The other teacher was Mr. Bill Swick.

MR. WALTON: Do you know what happened to him?

MR. WATTS: On Wednesday he received a notice saying that his position had been declared vacant, I believe was the way it was stated.

MR. WALTON: Wednesday, on what date?

MR. WATTS: The Wednesday, May the 8th, I mean May the 13th, as a result of the meeting on the 12th.

MR. WALTON: And the fact that these two teachers ran into difficulties, led the AFT to believe. Did the AFT assume that because these two teachers ran into difficulty, that the reasons underlying the previous non-retentions still existed?

MR. WATTS: We felt very keenly that way.

MR. WALTON: Well, what were these underlying causes which the AFT felt still existed?

MR. WATTS: We felt that the administration of the Seward Schools was either trying to obstruct or trying to prevent the faculty from enjoying the privileges and rights that normal faculties and teachers in the United States are entitled to.

MR. WALTON: As a matter of fact, there was quite a bittnerness of feeling between the AFT members and Mr. Fabricious, wasn't there?

MR. WATTS: I think that would be a reasonable statement.

MR. WALTON: Isn't it a fact that Mr. Fabricious was one of the underlying causes which led you to feel that the reasons for non-retention should be explored?

[114] MR. WATTS: That is probably the whole reason.

MR. WALTON: Had the AFT endeavored to explore this particular and paramount nature with the Board?

MR. WATTS: Will you state that again?

MR. WALTON: Had the AFT endeavored to explore this particular facet with the Board?

MR. WATTS: We had tried to meet with them.

MR. WALTON: And, specifically, when?

MR. WATTS: On May the - well we met on May the 8th, and no bill of particulars was presented there because the contracts were given -

MR. WALTON: When did you, if ever, discuss these matters with the Board - with any member of the Board?

MR. WATTS: We discussed - not until May the 16th did we make this effort and that is the reason why we asked for the meeting of May 16th, was because of the situation arising from Jerry Smith and Mr. Swick's non-retention or position being abolished.

MR. WALTON: And that was the meeting with Mr. Howell?

MR. WATTS: That is right.

MR. WALTON: And how long did the meeting last?

MR. WATTS: It must have lasted close to two hours.

MR. WALTON: And did you discuss with Mr. Howell all the matters contained in the open letter, Exhibit 7?

MR. WATTS: We did – not listed in that way, however.

MR. WALTON: Was Mr. Howell able to make any kind of, make any insurance to the AFT that a correction of these problems would result?

MR. WATTS: Mr. Howell made his position very clear at the beginning and at the end of the meeting, that he was there, that while he was a member of the Board, he was there primarily, he was there actually unofficially as a private citizen, because he could not act as a board unless the Board was in session.

MR. WALTON: Mr. Watts, did you report to work in the fall of 1959?

MR. WATTS: Yes I did.

MR. WALTON: I'm sorry, I mean in the fall of 1960?

MR. WATTS: The first day of school.

MR. WALTON: Can you tell me who was with you when you did so, if anyone?

[115] MR. WATTS: Mr. Swick and Mr. Blue and I went together to the High School and to the Grade School. Mr. Blue went first to the High School because that is where he formerly taught and that is where he would normally appear to start performing his duties as teacher.

MR. WALTON: And where did you report for work?

MR. WATTS: A few minutes later I went to the Grade School to report to Mr. Frampton.

MR. WALTON: And do you recall what date it was?

MR. WATTS: Well, it was the first day of school, in the fall.

MR. WALTON: Could you tell the Board what then there occurred?

MR. WATTS: I believe it was the sixth of September, 1960. What was your question?

MR. WALTON: Could you tell the Board what then and there occurred?

MR. WATTS: At the Grade School?

MR. WALTON: When you reported for work.

MR. WATTS: At the Grade School building? Alright. Mr. Swick, and Mr. Blue and I went in to the inner hall and started to go into the office, but Mr. Frampton came by, and as he came by, Mr. Swick who would normally be reporting there for duty, said something to Mr. Frampton, I'm not sure what it was, like we're here for an assignment, and Mr. Frampton said sorry, and went on down to the primary section of the building. We stood across the hall, against the wall, waiting for him to come back when he had more time to speak to me in a more adequate fashion and at that time Mr. Frampton, or Mr. Fabricious walked in and we had just come from the High School a few minutes before and he said something about you guys being here again, and I said I hadn't been here since last spring, and I believe Mr. Swick said something along the same line, that he hadn't been here for even a longer period of time, and then he, I don't remember whether anything was said, but he walked over a few feet in front of us to the door and said something about the place smells bad, or said something like that, and then he came back to where we were standing and said something about, I can't remember whether he said something to me first, or to Mr. Swick, but he said Mr. Swick, are you crazy? And I don't remember whether there was an answer or not, then I believe we said what we were there for, to report for work - I didn't say anything.

MR. WALTON: I take it that you resumed your duties?

MR. WATTS: Oh no, I went out in about 30 seconds or a minute later.

MR. WALTON: No other questions.

MR. BURR: A few questions I want to redirect. Do you believe that your membership in the American Federation of Teachers, Mr. Watts, would entitle you through its membership to do anything that you could not as an individual schoolteacher in the Seward School System do individually?

MR. WATTS: Ethically I would not do anything as the

member of the AFT that I would not do as an individual.

[116] MR. BURR: Do you believe that your membership in the AFT would entitle you to carry on a program, or to be a part of a program such as Exhibit 7, which is the open letter to the Seward School Board. I am assuming this is done under the auspices of the AFT.

MR. WATTS: Just the same as if it had been under the Seward District Teacher's Association. I would assume so.

MR. BURR: Well, it's signed by an organization which purports to be the American Federation of Teachers, Seward Local, isn't it?

MR. WATTS: That's right.

MR. BURR: And you're a member of that?

MR. WATTS: Yes.

MR. BURR: And you were at that time?

MR. WATTS: Yes.

MR. BURR: Well, do you believe that organization was licensed to do something that you couldn't do as an individual?

MR. WATTS: Ethically no.

MR. BURR: So you don't believe that your membership in the AFT at that time in May of 1959 inslighted you from responsibility for your participation in the distribution of Exhibit 7 in the City of Seward, if in fact, you are to be held responsible for that individually?

MR. WATTS: I think I can be held responsible individually and collectively to the same degree.

MR. BURR: You have known Mr. Fabricious for approximately how long, Mr. Watts?

MR. WATTS: About 26 or 27 months.

MR. BURR: And during this period of time you have had numerous dealings, more officially than unoffically with him, have you not?

MR. WATTS: Yes, mostly officially.

MR. BURR: Do you know him to be a liar or have the reputation of being a liar?

MR. WATTS: Knowing a person to be something like that

means that you have to have first hand knowledge yourself.

MR. BURR: I'm speaking of your own personal dealings with Mr. Fabricious and based upon those experiences. Do you know him to have the reputation in your opinion based upon your experiences, of being a liar, or a teller of untruth, or a fabricator of facts, whatever you want to call it. A teller of fables, a messenger of untruth?

MR. WALTON: Very well -

[117] MR. BURR: Is he any of these, Mr. Watts? In your opinion - or all of them?

MR. WALTON: Excuse me, may I inqure is the question "Are you familiar with his reputation as such" or is the question "Do you think he is such" - which?

MR. BURR: Well, Mr. Watts is my witness and unless he is confused and asks for Mr. Walton's assistance I'm going to ask him to answer my questions.

MR. WALTON: Mr. Chairman, I would appreicate it if one question were asked at a time and not 6 or 7. I confess I'm not sure exactly what the question is at this time.

MR. BURR: Well, you don't have to answer the question, Mr. Walton, fortunately.

MR. WALTON: Mr. Chairman, may I ask that the counsel be encouraged not to engage in argument with me. I think we should both direct our remarks to the chair and let him rule.

MR. BURR: I'll request a ruling.

MR. CASEY: Could you clarify that Mr. Burr, a little bit for him.

MR. BURR: Fine. You've known Mr. Fabricious for 27 months - you've had dealings personally in public and private with him during this period of time. Is that your testimony?

MR. WATTS: I have know him about that long.

MR. BURR: Well, during that 27 months and in your dealings with him had you had the opportunity of forming an opinion as to his reputation for veracity, good, bad or indifferent?

MR. WATTS: Very difficult for a person to know.

MR. BURR: Have you the opportunity to form an opinion? If you haven't, all you've got to do, is say no.

MR. WATTS: My opinion is based on a degree.

MR. BURR: I'm not asking you to perpetuate an opinion of somebody else, Mr. Watts. I want to know did you personally have the opportunity of formulating an opinion of the reputation of Mr. Fabricious' veracity or truth-telling?

MR. WALTON: Without trying to be obstructive. May I object, I can't see the relevancy. I think this is clearly beyond the scope of this inquiry. What Mr. Watts' private opinion may be, I can't see has no relevance to the charges which were leveled in the bill of particulars.

MR. BURR: You want a ruling, do you?

MR. WALTON: Oh, I certainly do.

MR. CASEY: Objection overruled, will you answer the question please.

[118] MR. WATTS: State your question and I will answer it.

MR. BURR: During the period of 25 months that you've known Mr. Fabricious and in your own individual dealings with him, both public and private, have you had an opportunity of forming an opinion as to his reputation for truth-telling?

MR. WATTS: No.

MR. BURR: Thank you. What is the last Board Exhibit - 15. I would like to have this exhibit, Exhibit 16, which is a letter to - from the Seward School Board to Mr. Fabricious. I would like to hand exhibit to the witness and ask if you have ever read that document or had that document read to you or had it read in your presence. And if so, when?

MR. WATTS: I cannot remember ever seeing this document - do you want me to identify it?

MR. BURR: Yes, can you identify the document?

MR. WATTS: I have never to my knowledge read this before.

MR. BURR: To your knowledge, has it ever been read to you or in your presence, the substance of it?

MR. WATTS: It may have been read, or it may have been referred to and quoted from, I don't know which it was.

MR. BURR: You do have some recollection of it?

MR. WATTS: Very, very vague - it may be the one referred to.

MR. BURR: I'll offer it as Exhibit. We have no other questions.

MR. WALTON: May I please examine Exhibit 16? No other questions.

MR. BURR: Thank you Mr. Watts. That's all. Next witness will be Mr. Fabricious. Will you raise your right hand. Do you swear the testimony you are about to give to be the truth, the whole truth, so help you God?

MR. FABRICIOUS: I do.

MR. BURR: State your name please.

MR. FABRICIOUS: George Fabricious.

MR. BURR: Your occupation.

MR. FABRICIOUS: Superintendent of schools in Seward.

MR. BURR: How many years experience do you have as a teacher or a principal or as superintendent in total.

MR. FABRICIOUS: About 34 years.

MR. BURR: Have you ever been discharged in the capacity of teacher, or superintendent or principal?

[119] MR. FABRICIOUS: Never.

MR. BURR: What's the longest tenure of employment you've had in anyone location?

MR. FABRICIOUS: 25 years.

MR. BURR: Did you leave under strained circumstances?

MR. FABRICIOUS: I did not.

MR. BURR: You left of your own volition?

MR. FABRICIOUS: That's right.

MR. BURR: What was your last period of employment, Mr. Fabricious?

MR. FABRICIOUS: Six years.

MR. BURR: Where was that?

MR. FABRICIOUS: Kenai.

MR. BURR: And before that?

MR. FABRICIOUS: I was in Wrangall.

MR. BURR: How many years in Wrangall?

MR. FABRICIOUS: Twenty-five.

MR. BURR: As Superintendent?

MR. FABRICIOUS: Fifteen as Superintendent and ten as a teacher.

MR. BURR: Did you leave of your own volition?

MR. FABRICIOUS: I did.

MR. BURR: You're familiar with most of the appellants in this case, are you not, Mr. Fabricious?

MR. FABRICIOUS: Yes.

MR. BURR: And you're familiar with a bill of particulars, or an open letter to the Seward School Board, Exhibit 7 in evidence, are you not?

MR. FABRICIOUS: I certainly am.

MR. BURR: I should like to go down that open letter to the Seward School Board, Mr. Fabricious, and ask you point by point, as to the truth or falsity in your own opinion, based upon your own knowledge of the statements in this open letter to the Board which was distributed in Seward. Item number 1, illegal non-retention of 3 teachers, now will you tell me whether or not, prior to the 18th of May, 1959, the contracts of the three individuals involved had been tendered to them?

[120] MR. FABRICIOUS: Two of the teacher's contracts were tendered, the third could not be tendered as that teacher already held a valid contract in another Alaska city and could not be given a contract in Seward until she had dropped her contract with the other school district.

MR. BURR: Will you tell me a little background on this alleged illegal non-retention. How it came about and what action, if any was taken by the Board, if you know?

MR. FABRICIOUS: The teacher - we attend to the re-election of teachers along in February. Names of all of the teachers are considered individually. Teachers in the Grade School, we have the recommendations of the Grade School principal. In the High School I made my recommendations

from there. Some of the teachers we felt should not be retained in the School System. And we were well aware of the Teacher Tenure Law that required a bill of particulars. That was discussed in the Board meeting at the time of the non-retention and we felt that to put out a bill of particulars, which we knew would be tossed and booted around the community would do the teachers far more harm than it could possibly do any good. So teachers were notified that if they wished to discuss their non-retention that they were certainly privileged to do so and they would then have been given a bill of particulars. Now in at least two instances of the teachers that I recommended non-retention of, I had several discussions with them previously and had told them why I did not feel their contracts should be renewed.

MR. BURR: Did anyone of the three individuals request a bill of particulars prior to the action taken by the AFT?

MR. FABRICIOUS: *None of them did.*

MR. BURR: Would you have honored a request to furnish this bill of particulars?

MR. FABRICIOUS: I certainly would. I would have honored any request if it had been given to me.

MR. BURR: Then the reason for not furnishing the bill of particulars at the outset was to protect they, themselves?

MR. FABRICIOUS: That was our intention.

MR. BURR: To protect their reputation.

MR. FABRICIOUS: That is right. We felt to put out a bill of particulars to be kicked around the community, it would be something that would follow them and if they wanted to go to other places, it could be detrimental to them.

MR. BURR: But as of the 18th of May, will you tell me whether or not, corrective action had been taken, in fact, by the Board?

MR. FABRICIOUS: It had.

MR. BURR: All right. Directing your attention to Item number 2 which reads, I'm reading from Exhibit 7 which says "Legitimate duty of administration to maintain or

create harmony in the school and the tension [121] noted in the pupils and the friction which some of them were aware of does not meet this requirement. Do you have any knowledge of any complaints that had been heretofore brought to your attention.

MR. FABRICIOUS: None. I was aware that there was friction but I don't feel that it was lack of harmony, and I didn't feel it was lack of harmony due to the administration. I felt that the lack of harmony was due to certain activities being carried among the faculty.

MR. BURR: Did Mr. Watts or Mr. Blue, either or in connection with each other, make any official complaint in the nature of a grievance to you as an individual concerning item number 2?

MR. FABRICIOUS: Never.

MR. BURR: Prior to the 18th of May, 1959.

MR. FABRICIOUS: They never did.

MR. BURR: Directing your attention to Item number 3 which says non-compliance of Fire Drill Regulations requiring ten fire drills per year.

MR. FABRICIOUS: That is correct. We did not have 10 fire drills in accordance with regulations.

MR. BURR: Was this ever brought to your attention by Mr. Blue or Mr. Watts prior to the 18th of May, 1959.

MR. FABRICIOUS: It was never brought to my attention.

MR. BURR: Item number 4, ordering the custodian Jesse Moore to do technical electrical work, beyond his skill in a dangerous building. Was that presented in the form of a complaint or grievance by Mr. Blue or Mr. Watts prior to the 18th of May, 1959?

MR. FABRICIQUS: It was not.

MR. BURR: Item number 5. On different occasions threatening to get rid of one-third of the faculty this year and one-half of the remainder next year and the remainder of the statements in that paragraph. I should like to ask you whether you have ever made any one or more of those statements to either Mr. Blue or Mr. Watts or in their presence?

MR. FABRICIOUS: I don't recall that I ever made such a statement and least of all would I ever make it to Mr. Watts whom I knew would bat it about the community as rapidly as he could. Now as far as the teachers their property and taxpayers that is not my responsibility, my selection of teachers or my recommendations for teachers is on the basis of their teaching ability and their services in the school system - not whether or not they are taxpayers or hold property - that's their private business and has no connection with the school system.

MR. BURR: Mr. Fabricious, prior to the 18th of May, 1959, did either Mr. Blue or Mr. Watts ever present to you one or more of these items in the form of an official grievance?

[122] MR. FABRICIOUS: No.

MR. BURR: Directing your attention to item number 6 - provoking the resignation of an outstanding teacher by forbidding him to ride on the school bus which seems to be in violation of the intent of the rules and regulations, etc., etc. Was that ever presented to you in the form of an official grievance by either Mr. Blue or Mr. Watts prior to 18th of May, 1959?

MR. FABRICIOUS: Definitely not.

MR. BURR: Is it true?

MR. FABRICIOUS: It is not. As a matter of fact, Mr. Condor presented his resignation.

MR. BURR: Do we have evidence of that resignation - was it introduced as evidence? Do you have it there, I would like to offer it. At this time I would like to offer the letter of resignation of Mr. Condor as an Exhibit.

MR. WALTON: I should like to see it.

MR. BURR: Yes. Could we adjourn for just a minute?

MR. WALTON: Why don't you make it out later. No objection to this later.

MR. BURR: Well, I would like to offer it at this time as Exhibit 17.

MR. CASEY: We will call a 5 minute recess. Court recessed at 2:40 PM.

MR. BURR: I have Exhibit 17 and 18 which I would like to offer at this time. Can I have Exhibit 16 please? Will you identify Ex. 16 & 17 or 17 and 18, please?

MR. FABRICIOUS: 18 is the resignation of Mr. Jack Condor, no. 17 it is. And 18 is the transcript of the conversation that took place at the time of his resignation.

MR. BURR: Mr. Fabricious, directing your attention also to paragraph 6 of Exhibit 7, the part that says the apparent authoritarian mishandling of this resignation, impairing the teacher's chances for a teaching position elsewhere. Do you know of any attempt on the part of Mr. Condor to seek a teaching position elsewhere?

MR. FABRICIOUS: I know of no attempt.

MR. BURR: Do you know whether or not that his resignation here would in any manner be reflected on his attempts to get other educational—

MR. FABRICIOUS: No one ever wrote to me regarding Mr. Condor and his work here in Seward, either asking for a recommendation or wanting to know anything about him. So I have no knowledge as to whether he had ever asked a position, or sought a position any place else.

MR. BURR: Was he fired from the Seward School System?

MR. FABRICIOUS: He was not.

[123] MR. BURR: On the second page of Exhibit 7 I would like to ask you whether or not the statement contained therein was ever submitted to you in the nature of a grievance by either Mr. Blue or Mr. Watts prior to May 18, 1959?

MR. FABRICIOUS: You mean 7? No.

MR. BURR: Is number 7 true in your opinion?

MR. FABRICIOUS: I know of no case of dictatorial treatment, some people might construe giving orders dictatorial treatment, but as an administrator you are in a position where it is sometimes necessary to give orders, and there are some people who always consider orders as dictatorial.

MR. BURR: Did you ever intentionally, or with any

malice or forethought, cause any teacher under your control, to do or say anything that would require of necessity a loss of personal dignity?

MR. FABRICIOUS: Not to my knowledge.

MR. BURR: Would you at this time make such a request.

MR. FABRICIOUS: No, I wouldn't.

MR. BURR: Has that ever been submitted to you in the nature of a grievance, or any of your activities, by any teacher under your control?

MR. FABRICIOUS: No.

MR. BURR: By Mr. Watts or Mr. Blue?

MR. FABRICIOUS: No.

MR. BURR: Number 8 on Exhibit 7 says that speaking in a peremptory and a threatening manner in the presence of a pupil to Mr. Smith. Will you explain that please?

MR. FABRICIOUS: It so happens that during the spring here we had a number of students who took an extra day off and skipped, so we gave them detention for a certain period of time and a research paper to write. These youngsters were required to remain after school each night for a certain period of time. The teachers were scheduled for duty to stay with these children in the evening. In the schedule of duties, I myself took duties for any other teachers. One evening of which we were speaking here, I was in the office, Mr. Blue happened to be conveniently present, and Mr. Smith came down at almost 4:20, waving his hands and yelling, saying "I won't take this detention, you can't make me take this detention, the kids up there are screaming wild, and the radio's blasting in there, I won't take that detention, you can't make me take it." That's just about the way it went, throwing his hands around. I said practically nothing to Mr. Smith in the meantime - I went out in the hall and he continued to exclaim and I said, no, you don't have to take it, you don't have to work here at all. He said, alright, I quit. And I said, go ahead and quit, and that's about the size of it.

MR. BURR: Now, Mr. Fabricious, was the supervising

of the detention in the nature of a duty as you understood it.

[124] MR. FABRICIOUS: It certainly was.

MR. BURR: Was this individual singled out as the only one to take this duty?

MR. FABRICIOUS: Definitely not.

MR. BURR: Were there other teachers assigned similiar duties?

MR. FABRICIOUS: Other teachers were taking their duties with no remarks about it or anything else.

MR. BURR: Were there any present - any pupils present, when this little fiasco took place?

MR. FABRICIOUS: Yes there was one student present - a student that had been sent down there by Mr. Smith.

MR. BURR: Do you know this to be a fact?

MR. FABRICIOUS: Yes, that's right.

MR. BURR: What is the student's name?

MR. FABRICIOUS: Owens - I can't think of his first name. Dennis Owens.

MR. BURR: Did you speak with the pupil on this point?

MR. FABRICIOUS: No, I said nothing to the student. I merely asked him why he had been sent down there, and he said he didn't know why he had been sent down there. His remark was that I dropped the top off my pen and he sent me down here.

MR. BURR: And he, you're referring to Mr. Smith?

MR. FABRICIOUS: No, it was Mr. Smith who sent the boy down there, yes.

MR. BURR: Was the, was the substance of this conversation with Mr. Smith ever presented to you in the nature of a grievance by either Mr. Blue or Mr. Watts prior to May 18, 1959?

MR. FABRICIOUS: No.

MR. BURR: By anybody?

MR. FABRICIOUS: No.

MR. BURR: Directing your attention to number 9 on Exhibit 7 which states "two specific instances have occurred

violating the requirements to provide educational leadership in the local regulations and they have sub-paragraphs a, b and c. Would you be kind enough to explain each of those?

MR. FABRICIOUS: A which says neglect to develop a proper music program. That, of course depends upon the need of a good music instructor first of all.

[125] MR. FABRICIOUS: In the Fall, when school first started, Mr. Swick came to me and asked me for somewhat of a change of duties. He said, I'm not a music man, I'm a band man. That was the start of it. I agreed with him - he's not a music man. He did not develop a music program but that could scarcely be the blame of the administration. I might further enlarge on that by stating that when it came to the Music Festival in the Spring, this too was brought to the attention of the Board, that Mr. Swick was given notice from Anchorage about the Music Festival, all the forms and all for submission to participate in the Music Festival. Mr. Swick failed to send in any of this and it came up to almost the day of the Festival that we were notified that we had nothing in and that we weren't even on the program. So I called Anchorage about it and they came right back on the phone and said this material was sent to our music man some time ago. I called Mr. Swick about it in the Grade School and asked him about it. And he said yes, he finally admitted he had received it, I just neglected to send it in, I thought it wouldn't matter after that. So we immediately contacted Anchorage and I made personal arrangements for the Musical Festival for our participation above Mr. Swick's head.

MR. BURR: Prior to May 18, 1959, did either Mr. Blue or Mr. Watts ever present in the form of a grievance a a charge of neglect for your failure to promote the development of a proper music program?

MR. FABRICIOUS: No.

MR. BURR: Has that ever been presented in the form of a grievance by anybody.

MR. FABRICIOUS: No.

MR. BURR: Sub-paragraph b, says information relative to the Drama Festival in Palmer was not made known to the teachers and student body. Would you enlarge on that point?

MR. FABRICIOUS: Well, first of all, the Drama Festival is something that doesn't pertain to all teachers - it pertains only to the Drama teacher. In this instance our Drama teacher was Mrs. Lowell. She was reluctant to even enter in the Drama Festival and felt that she didn't have youngsters that would make good participation in it. And as a result, we did not participate in it. I might also state that participating in such an affair is an administrative affair, and if I'm remiss in my administrative affairs it's up to the Board to correct me, not a group of teachers.

MR. BURR: Prior to May 18, 1959, was this ever brought to your attention in the form of a grievance by Mr. Blue or Mr. Watts or anybody else to your recollection?

MR. FABRICIOUS: No.

MR. BURR: Is the information true?

MR. FABRICIOUS: No, it isn't.

MR. BURR: Directing your attention to sub-paragraph C - paragraph 9 of Exhibit 7 which states that this same requirement is violated in overtly and [126] covertly driving out Mr. Condor, Mr. Swick and Mr. Smith and possibly others who had a definite contribution to make to the functions of the school. Do you have an opinion as to that?

MR. FABRICIOUS: Well, I would certainly say that when a man resigns because he does not wish to follow regulations approved by the Board, that it certainly is not overtly and covertly driving him out.

MR. BURR: Mr. Swick?

MR. FABRICIOUS: Mr. Swick was offered a contract, yond the April the 10th date set for validation - so we did. a contract with a validation date on it. There came up a new salary bill in which it was felt that the salaries might be changed so the teachers asked if we would go a little beyond the April the 10th date set for validation - so we did. And they were all then notified that April 17th would be

the validation date and I believe it was in, I'm not sure, it was along in May, I believe, that Mr. Swick, before we notified Mr. Swick that his position was being filled. From that time on, from the time that he was notified, from the time of notification, Mr. Swick never contacted me personally, or in writing, or any member of the Board regarding his contract and it was not until May the or September the 8th, that he appeared and asked for his job. Now, may I enlarge on this?

MR. BURR: Yes.

MR. FABRICIOUS: I would like to ask how we are going to operate a school with 30 teachers, if 29 of those don't turn in their contracts and appear on the first day of school and expect to start.

MR. BURR: How many teachers did you have in the system, Mr. Fabricious, in May, 1959?

MR. FABRICIOUS: I believe it was 30.

MR. BURR: How many teachers turned their contracts as you requested?

MR. FABRICIOUS: All of those who expected to return.

MR. BURR: How many of them expected to return?

MR. FABRICIOUS: Oh, I don't recall.

MR. BURR: Approximately.

MR. FABRICIOUS: Oh, I would say twenty-five or six, something like that.

MR. BURR: And by virtue of the fact that Mr. Swick never returned his contract signed as requested and as he was so advised what effect, if any, did it have on the action of the Board?

MR. FABRICIOUS: Well, the fact that he did not return it left them in no position other than to fill it with someone else.

[127] MR. BURR: And was Mr. Swick so advised?

MR. FABRICIOUS: He was.

MR. BURR: And did he thereafter, after being so advised make any attempt to revoke this Board's action, or notice of the Board that they were going to declare his position vacant?

MR. FABRICIOUS: No.

MR. BURR: And you had no contact with him until you say in September?

MR. FABRICIOUS: That's right.

MR. BURR: At which time he did what?

MR. FABRICIOUS: He appeared at the Grade School and asked about his position and Mr. Frampton notified him he didn't have one. That same night was Board meeting night, so he appeared at the Board and he was asked by the President of the Board if he had something he wished to present, and he said yes. He wished to ask about his contract. So I immediately read an opinion from you regarding validation dates in contracts and I also read the statement from Howard Matthews, then Commissioner of Education, regarding validation dates of contracts and saying that it was conceded in practice, in fact this state itself does carry on such a practice. And he was notified then that he hadn't even yet presented his contract. Mr. Swick then remarked "have you had your mail today?" and I said yes, but I've nothing from you. As far as I'm concerned, and as far as the Board is concerned, the contract never did reach their hands.

MR. BURR: The third individual is Mr. Smith. Now what did the Board, or did you have to do with him?

MR. FABRICIOUS: Mr. Smith was notified that we were curtailing the high school faculty inasmuch as that year the Territory had increased the teacher-pupil ratio, and I felt that he was the least valuable of the teachers in the system, and should be then, the first to go.

MR. BURR: Can you tell me whether or not it was within the realm of your responsibility to declare positions vacant?

MR. FABRICIOUS: I didn't declare - no it's not my action.

MR. BURR: Was it a Board function?

MR. FABRICIOUS: That's a Board function.

MR. BURR: Did the Board make such a determination?

MR. FABRICIOUS: That's right.